IN THE

Supreme Court of the United States.

October Term. 1901.

No.

THE HUGULEY MANUFACTURING COMPANY, AND THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, PETITIONERS,

versus

HONORABLE WILLIAM T. NEWMAN, JUDGE OF THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF GEORGIA, RESPONDENT.

Petition for Prohibition, Mandamus, Etc.

Come now the petitioners herein, by J. C. Welles, John M. Chilton, and Alexander C. King, their counsel appearing in that behalf, and move the Court to grant them leave to file their petition for a writ of prohibition, mandamus, etc., directed to the respondent herein, with the transcripts of record and briefs accompanying.

J. C. WELLES,
JOHN M. CHILTON,
ALEXANDER C. KING,
Of Counsel for Petitioners, etc.

SUPREME COURT OF THE UNITED STATES.

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DOCKET NO.

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AND

THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, PETITIONERS,

versus

HONORABLE WILLIAM T. NEWMAN, JUDGE OF THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF GEORGIA.

PETITION FOR PROHIBITION, MANDAMUS, ETC.

BRIEF FOR PETITIONERS.

~~JOHN T. MORGAN,~~
J. C. WELLES, ~~BENNETT & WELLES,~~
JOHN M. CHILTON,
Of Counsel for the Petitioners.

PRESS OF BYRON S. ADAMS.

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~~John T. Morgan,~~
Welles, Bennett & Welles,
John M. Chilton,
Of Counsel for the Petitioners.

BRIEF ON PETITION FOR PROHIBITION, MANDAMUS, ETC.

First.

Wrongful Jurisdiction.

The proceeding of which we complain herein is unique in jurisprudence, and involves a question never yet raised in a civilized court. That question is whether or not a corporation, which is not a party to any suit and whose interests are not involved in any litigation, present or past, can file an ancillary bill, based upon a former proceeding in which a decree has been rendered and fully executed in the United States Circuit Court of a State in which none of the parties reside and in which none of the property to be affected is located, and can enjoin a suit in a foreign State pending in a court of competent jurisdiction, and wherein none of the parties thereto have objected to the jurisdiction.

I.

The Statute.

The want of jurisdiction to entertain this action pending for injunction in the Circuit Court of the United States for the Northern District of Georgia is apparent upon the face of the record.

The writ of injunction (Transcript, p. 38), orders: "that in the meantime and until the hearing is had, the

defendants are restrained from further proceeding in the cause in the Chancery Court of Chambers County, Alabama," etc.

It is therefore expressly precluded and forbidden by statute, in Section 720 of the Revised Statutes of the United States, namely:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

It is not claimed that this writ falls within the exception, so the Circuit Court has granted a writ to stay proceedings in a State court—the very action which is positively forbidden by the statute.

In Mills, Sheriff, *vs.* Life and Trust Co., 100 Fed., 344, it is said:

> "There is nothing in the language of Section 720 of the Revised Statutes, nor in the reason for that enactment limiting its provisions to parties and privies to the proceeding in the State Court, but the prohibition is general, and denies to every Federal Court the right to stay by injunction, at the suit of any person, proceedings in any court of a State, with one exception, within which the present case does not come" (*i. e.*, bankruptcy).

In re Sawyer, 124 U. S., 219, 220, Mr. Justice Gray held—

> * * * "If those proceedings * * * are to be considered as proceedings in a court of the

State (of which we express no decided opinion), the restraining order of the Circuit Court was *void*, because in direct contravention of the peremptory enactment of Congress, that the writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except when authorized by a bankrupt act."

Act of March 2, 1793, C. 22, § 5, 1 Stat. 335;
Diggs *vs.* Walcott, 4 Cranch, 179;
Peck *vs.* Jenness, 7 How., 622, 625;
Rev. Stat., § 720;
Watson *vs.* Jones, 13 Wall., 679, 719;
Haines *vs.* Carpenter, 91 U. S., 254;
Deal *vs.* Reynolds, 96 U. S., 340;
Sargent *vs.* Hilton, 115 U. S. 348.

And the Court concludes its opinion in the following words:

"But if it (the Circuit Court) act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply *void*."

Elliott *vs.* Peirsol, 1 Pet. 328, 340;
Wilcox *vs.* Jackson, 498, 511;
Hicky *vs.* Stewart, 3 How., 750, 762;
Thompson *vs.* Whitman, 18 Wall., 457, 467.

"In any aspect of the case, therefore, the Circuit Court of the United States was without jurisdiction or authority to entertain the bill in equity for an injunction."

In Haines *vs.* Carpenter, 91 U. S, 254, this Court said:

"In the first place, the great object of the suit is to enjoin and stop litigation in the State Courts, and to bring all the litigated questions before the Circuit

> Court. This is one of the things which the Federal Courts are expressly prohibited from doing."

But we need not multiply authorities.

II.

The Action in the Circuit Court is Not Ancillary—Want of Jurisdiction of Subject-Matter.

An ancillary proceeding must have something to which it may attach as a subsidiary measure. It is necessarily dependent upon some valid action which has preceded it.

> "Where a bill does not relate to some matter already litigated in the same court, by the same persons, and which is not either in addition to or a continuance of an original suit, it is an original bill, not an ancilliary one."
>
> Christmas *vs.* Russell, 14 Wall., 69.

1. In this case it appears from the record that the prior proceedings in the Circuit Court were void for want of jurisdiction of the subject-matter.

The bill, praying for the injunction (Transcript p.) states that the mortgage foreclosed was "upon all of the property of the corporation situated in both of said States of Alabama and Georgia."

It is to be noted that according to the recitals in the bill filed in the pending action, the former suit to which this is claimed to be ancillary was not for the purpose of acting *in personam* to require the mortgagor to execute a deed for the mortgaged premises, nor was a decree to that purpose rendered in the cause; but the court ordered a sale in Georgia of the lands in Alabama, and a deed to be executed

by a commissioner appointed by said court after the confirmation of the sale.

The mortgage expressly described the whole of said property, except a few detached, isolated islands, as "lying and being in Chambers County, State of Alabama." (Transcript, p11 , Exhibit "A," p22.) These lands and other property thereon located, "including the cotton mill and all the machinery therein or thereto belonging, etc.," were entirely beyond and without the reach of any process of the Circuit Court of the United States, for the Northern District of Georgia, or of any marshal or commissioner appointed thereunder. In their answer to the bill filed by petitioners in the Chancery Court of Alabama, defendants admit and adopt this said description of the property, and refer to the same as true and correct—as set out in said bill and mortgage attached as exhibit.

> "A suit for a decree of foreclosure is a proceeding *in rem*, as well as *in personam*, and therefore cannot be properly brought elsewhere than in a court having local jurisdiction over the premises."
>
> Stevens *vs.* Ferry, 48 Fed., 9.

> "In an action brought to foreclose a mortgage, it is necessary to give the court jurisdiction to enter a decree of foreclosure, for the plaintiff to allege and prove that the land sought to be foreclosed is situated in the county (or district) in which suit is brought."
>
> Campbell *vs.* West, 86 Cal., 199.

In the fullest recognition and admission on the part of those who organized the Galeton Cotton Mills that *all* the

property in controversy, as above described, lies wholly within the State of *Alabama*, they procured their charter and operated this property throughout under a charter of "The Galeton Cotton Mills, of *Chambers County, Alabama*," and not otherwise, and its successor, the Riverdale Cotton Mills, procured a special license from the State of Alabama to continue to operate the identical property with one of its principal places of business "*at Riverview, Alabama*" (the Factory town in Alabama). (Trans., pp. 65 Prohibition,

And in further recognition and admission of the fact that the property lies within the State of Alabama, the trust deed and mortgage securing the bonds issued by the Galeton Cotton Mills were recorded in the County of Chambers, State of Alabama.

> "If a sale of the property is asked for, as this operates *in rem*, jurisdiction is restricted to the local court of the county (or district) in which the land lies."
>
> Jones on Mortgages, Sec. 1444.

In Farmers Loan & Trust Co. *vs.* Postal Tel. Co., 55 Conn., 334, a foreclosure was asked of a mortgage given on continuous and what might be regarded as indivisible property, by the Postal Telegraph Company, on land situated in Connecticut and New York. Judgment was rendered in New York, a referee was appointed who sold all the property and executed a conveyance. Afterwards a suit was brought in Connecticut to foreclose there. An attaching creditor set up the defense of the prior foreclosure. It was held, on appeal, affirming the decree of the lower court,

that a foreclosure in the courts of the State of New York of a mortgage on lands in Connecticut had no validity; the courts of each State having exclusive jurisdiction to settle the title to lands therein.

In Watkins *vs.* Holman, 16 Peters, 25, it is said:

> "A court of chancery acting *in personam* may well decree the conveyance of land in any other state and may enforce the decree by process against the defendant. But neither the decree itself, nor any conveyance under it, except by the person in whom the title is vested, can operate beyond the jurisdiction of the court."

And in Booth *vs.* Clark, 17 How., 322, it is said—as to a receiver appointed under a creditor's bill:

> "He has no extraterritorial power of official action; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property."

In R. R. Co. *vs.* R. R. Co., 82 Fed., 943, "a suit was brought in the United States Circuit Court of Ohio for the foreclosure of a mortgage on defendant's railroad which extends through Ohio and West Virginia. After the appointment of a receiver in that suit, complainant filed a bill, termed an 'ancillary bill,' in the United States Circuit Court for West Virginia reciting the proceeding in the first suit and exhibiting a copy of the bill therein and praying the court to take 'ancillary jurisdiction,' and furnish such relief as might be 'necessary to accomplish the purposes of the first suit, and for such other and further relief as the nature of the case may require,' etc. *Held*, that the bill

should be dismissed. If the aid of the court in West Virginia is desired in enforcing the mortgage *it must be invoked by an independent suit.*" (Opinion by Mr. Justice Harlan.)

> "The rule in this country is that receivers appointed in one jurisdiction are not entitled as of right to recognition in other jurisdictions; and that courts of equity cannot acquire extraterritorial jurisdiction over property by appointing receivers."
>
> Atkins *vs.* R. R. Co., 29 Fed., 173.

If not by appointing receivers, then in no other way.

In Black on Judgments, Vol. 2, Sec. 872, are the following rules:

> "(*a*). It is a well settled principle that real and immovable property is governed by the law of its *situs*.
>
> "(*b*). Only the courts of the State or County within which it lies can have any jurisdiction over it. It cannot be directly affected by the judgment or decree of any foreign court.
>
> "(*c*). Nor are those rules abrogated by the constitutional provisions or the legislation of Congress upon the interstate effect of judgments. Those provisions were not designed to extend the power and authority of any State over real property within the territory of another.
>
> "(*d*). Hence the decree of a court in one State for the sale of lands lying in another State is entirely inoperative to transfer or affect any interest of the owner, either legal or equitable."
>
> Price *vs.* Johnston, 1 Ohio St., 390.

In Boyce *vs.* Grundy, 9 Peters, 275, Mr. Justice Story said:

> "Another objection is to that part of the decree which creates a lien upon the land in controversy lying in another State, and decrees a sale for the discharge of the lien. We are of opinion that the decree is erroneous in this respect * * * the court has no jurisdiction to decree a sale to be made of land lying in another State by a master acting under its own authority."

To same effect see:

Watts *vs.* Waddle, 6 Peters, 389;
Lynde *vs.* Columbus, C. Ry. Co., 57 Fed., 993;
Jones on Mortgages, Sec. 1444;
Works on Courts and their Jurisdiction, pp. 53, 55, Sec. 15, and Note citing and reviewing;
Burnley *vs.* Stevenson, 24 Ohio St., 474, 478; 15 Am. Rep., 621.

A recent decision of the United States Circuit of Appeals, Fifth Circuit, in the case of Guarantee Trust & Safe Deposit Co. *vs.* The Delta & Pine Land Co., 104 Fed., 10 (No. 913) held as follows:

> "While a Federal court of equity may compel a conveyance of lands in another State by a decree *in personam*, against a party who holds the title, *it has no jurisdiction to itself transfer the title to such lands by a sale and conveyance made through its master or commissioner.*"

In the opinion it was said:

> "A writ of assistance, issued by the court in Tennessee to put the purchaser, at the sale made by the master,

in possession of the property, *would be wholly inoperative, because such process could have no extraterritorial effect.*"

Toland *vs.* Sprague, 12 Peters, 300; 9 L. ed., 1093;
Picquet *vs.* Swan, 5 Mason, 40 Fed. Cas., No. 11,134;
Ex-parte Graham, 3 Wash. C. C., 456; Fed. Cases, No. 2,688;
Walker *vs.* Lea (C. C.), 47; Fed. Cases, No. 645;
See also, Pennoyer *vs.* Neff, 95 U. S., 714; L. ed., 565.

In Northern Indiana R. R. Co. *vs.* Mich. Central R. R. Co., 12 How., 233, it is said:

"Whenever the subject-matter in controversy is local, and lies beyond the limits of the district, no jurisdiction attaches to the circuit court sitting within it. An action for ejectment cannot be maintained in the District of Michigan for land in any other district. Nor can an action for trespass *quare clausum fregit* be prosecuted where the act complained of was not done in the district. Both of these actions are local in character, and must be prosecuted where the process of the court can reach the *locus in quo*. In his Conflict of Laws, Sec. 463, Mr. Justice Story says real but mixed actions, such as trespass upon real property, are properly referable to the forum *rei sitae*."

In Foster *vs.* Glazener, 27 Ala., 396, Mr. Chief-Justice Chilton, in delivering the opinion of the court, held as follows:

"It is a well-settled principle of international law that every attempt on the part of one nation or State, by its legislation, to grant jurisdiction to its courts over persons or property not within its territory is regarded elsewhere as mere usurpation, and all judicial proceedings in virtue of it are held utterly void for every pur-

pose. * * * This proceeds upon the known maxim, '*Extra territorium jus dicenti impune non paretur.*'"

Story's Conf. of Laws, 539.

The want of jurisdiction of a court of equity to foreclose a mortgage upon lands situated beyond the territorial jurisdiction of the court, and to sell those lands under its decree, is radical and absolute, and may be suggested at any stage of the proceedings, by counsel, or may be noticed by the Court *ex proprio motu*.

Mansfield, etc., Ry. Co. *vs.* Swan, 111 U. S., 379;
Parker *vs.* Ormsby, 841 U. S., 81;
Grace *vs.* Insurance Co., 109 U. S., 278.

See also:

Morris *vs.* Gilmer, 129 U. S., 325;
Vannerson *vs.* Loverett, 31 Fed., 376–8;
Desty's Fed. Proc., Vol 1 (9th ed.), Sec. 84, and cases cited.

In Beach on Receivers, Sec. 24 (Note 3), it is said:

"It is also a well established rule, founded upon reasons of public policy, that the courts of one State or country cannot make a decree ordering the conveyance of land situated in another jurisdiction, which will be recognized as valid and binding by the courts of that State."

Moseby *vs.* Burrow, 52 Tax., 396, and cases cited.

In Davis *vs.* Headley, 7 C. E. Green, 115, the learned Chancellor Zabriskie declared:

"It was a well settled principle of law in the decisions of England and of this country, and acquiesced

in by the jurists of all civilized nations, that immovable property is exclusively subject to the laws and jurisdiction of the courts of the State or nation in which it is located, and that no other laws or courts could affect it.

"The jurisdiction of courts over land is local. Neither State nor Federal courts can reach or confer title, nor sell under a decree those which are situated in a different State from that in which the court sits."

Boyce *vs.* Grundy, 9 Pet., 275, *supra*;
Watkins *vs.* Holman, 16 Pet., 16.

"And so in the district as to United States Circuit Courts."

Northern Indiana R. R. Co. *vs.* Mich. Cent. R. R. Co., 15 How., 233;
Watts *vs.* Waddle, 6 Pet., 400;
Rorer on Interstate Law (2d ed.), Ch. XXI, 284 (N. 1), and cases cited thereunder.

"And where a sale is made by virtue of an execution from the United States Court, the State law directing the place of sale governs."

12 Plead. & Pract., 41, citing:
Smith *vs.* Cockrell, 6 Wall, 756;
Wayman *vs.* Southard, 10 Wheat., 1, and other cases cited.

See also:

Clark *vs.* Graham, 6 Wheat., 597;
Robinson *vs.* Pickrell, 109 U. S., 608, 27, 1049.

By statutory enactment in nearly all the States all sales of realty must be held *at the court-house in the county in which the property is situated.*

12 Ency. Plead. & Pract., citing:
Anniston Pipe Works *vs.* Williams, 106 Ala., 334;
Longworthy *vs.* Featherstone, 65 Ga., 165;
and numerous other cases cited from other States.

III.

Replying to Contention of Opposing Counsel and their Reliance upon Effectiveness of a Decree *in personam*—Necessity of Ancillary and Auxiliary Bills, in order Subject Property Lying in Another State.

Notwithstanding the foregoing unbroken line of authorities, which have been finally crystallized into *horn-book law*, and "acquiesced in by the jurists of all civilized nations," as Chancellor Zabriskie well says, it is averred by counsel that said property is indivisible and therefore not affected by either State or county lines. If this property has destroyed the divisibility of the States of Alabama and of Georgia, it is certainly greatly to be regretted.

There is no such law as that of the divisibility of property. No text-writer upon the law of real estate or of sales of real property has ever treated upon the subject. Neither Bouvier nor Rapalje's Dictionary of Law gives any definition of the word "divisibility," or of the word "indivisibility," and no digest has such a title. There is a principle in equity and in probate, that where land cannot be divided without injuring the rights of minors, tenants-in-common,

or other wards of chancery, or of probate, it will be sold as a whole and not in parcels. But invariably in such cases, where land is situated in different counties and in different States, supplementary ancillary or rather auxiliary proceedings are imperatively required.

There is also a question which arises as to the divisibility of railroad franchises, where railroad corporations have been consolidated by legislative enactment specially providing for the consolidation of said corporation and their franchises into a third corporation in the parent State which creates the original corporation. Where such a consolidated railroad is the owner of a bridge across a navigable stream, which forms the boundary line between two States or countries, the jurisdiction over such stream resting in the Federal Government, and the bridge having to be built under a special act of Congress, such a bridge is exclusively within the jurisdiction of a Federal Court, and as to destroy the abutments over which alone the States could exercise jurisdiction would be to destroy the bridge, and the abutments being but incidental to the bridge, the Federal court will treat the property as lying within the Federal jurisdiction. So also courts have held in some States that rolling stock is real estate. We have the anomaly therefore of real estate situated in different States sold on the same day. These decisions are rendered necessary by the peculiar character of railroad property and apply to no other property. If foreclosure sales were required in all the States they would have to be held at identically the same moment in each State, and evidence would have to be taken as to the exact location of each portion of the rolling-stock at the precise moment of

the sale. Even then some train might be crossing a State line at a given moment and not be sold by any State, as it would be impossible to tell precisely how many cars of a moving train are in each State. The Supreme Court of the United States allowed a Federal court to make a sale of the entire property of a railroad corporation, with property in different States, upon the ground of the necessities of the particular case, but even then required the Trustees under the mortgage, who were before the court, to execute the deed.

Muller *vs.* Dows, 94 U. S., 449.

The United States Circuit Court of Appeals, in reviewing this authority, on the circuits, have expressly and uniformly held that the master commissioner had no jurisdiction beyond the State line, as he was merely process, and that the validity of the sale rested upon the deed of the Trustees, having the effect of a decree *in personam*. This also is the view which every court has adopted in considering this decision, not only on the circuit but including the repeated ratifications, in later decisions, by the Supreme Court of the United States itself.

Railroad corporations, as quasi public corporations, have privileges and responsibilities not possessed by purely private corporations. The sovereign power of eminent domain vests in railroad corporations by reason of their public nature, even though it was argued by some of the ablest lawyers and held by some of the best courts, in the early days of railroad enterprises, that eminent domain, being an attribute of sovereignty, could not be delegated. It is now universally agreed that it can be so delegated, but

the reason is only found in the fact of the public nature of these corporations.

In Mercantile Trust Co. *vs.* Kanawha & Ohio Ry. Co., 39 Fed., 337, Mr. Justice Harlan, after reviewing exhaustively the facts, concluded in the following strong words:

> "It might be well if Congress would so enlarge and regulate the jurisdiction of the courts of the United States as to enable a circuit court, in which is brought an original suit for the foreclosure of a mortgage resting upon an interstate railroad, to take actual possession by its officers of the entire line, and of all the mortgaged property, wherever situated, and administer it for all concerned; preserving in that mode the unity of the road, and the just rights of mortgagor, mortgagees, and creditors, as well as those of the general public interested in commerce among the States. **But there has been no such legislation, and we do not see our way clear to effect any such result by judicial orders merely.**"

The rule recognizing the absolute regularity and necessity for the filing of ancillary and auxiliary bills in order to reach and subject property—especially railroad property—lying in other States, has been carefully laid down, under petition from the Circuit by Justices Field, Harlan, Brewer and Brown, in the important case of the Farmers' Loan & Trust Co. *vs.* Northern Pacific Railroad Co., 69 Fed., 871, and 72 Fed., 26.

To same effect, see:

Dillon *vs.* Oregon S. L. & U. N. Ry. Co., 66 Fed., 622, and cases cited;

Central Trust Co. *vs.* Wabash, St. Louis & P. Ry. Co., 29 Fed., 620;
Reynolds *vs.* Stockton, 140 U. S., 254. 272;
Wilmer *vs.* Atlanta & Richmond Air Line Ry. Co., 2 Woods, 447; 30 Fed. Cases, No. 17,776.

As pointed out in the brief of associate counsel, Messrs. King & Spalding, accompanying, the uniform adjudication of the Circuit Court of the United States, for the Northern District of Georgia, and of Judge Newman himself, in all cases coming under that jurisdiction, has been in obedience and conformity with this foregoing rule, ancillary and auxiliary proceedings, in each instance, having been invariably had and observed in the Circuit Courts of the adjacent States in which the property was situated.

IV.

The Record Shows that, in the Prior or Original Suit to which the Pending Action is claimed to be Ancillary, there was a Conspicuous Absence of Necessary Parties, and a Misjoinder of Parties, and therefore No Jurisdiction Attached.

The record shows that there were two living trustees, and the averment is made that one is adversely interested, and is made party defendant. The record discloses that had he, W. T. Huguley, been joined as plaintiff the jurisdiction would have been ousted. It is not averred that he refused to join as plaintiff, nor are any facts alleged as to the manner in which he was adversely interested, nor was

this inquired into at any stage of the proceedings. If he had been so joined, on one side of the case, as complainants, would have been Robinson, a citizen of Alabama, and Huguley, a citizen then of Georgia, and on the other, citizens and corporations of Georgia. But instead of joining Huguley as a complainant, he was made a *defendant*. Does this cure the jurisdictional defect?

If the suit had been brought by the bondholders, the beneficiaries of the trust, it is possible the trustees, if they had been made parties at all, would have been regarded as nominal parties, whether they had been joined as plaintiffs or defendants. Indeed, it appears on the face of the record, in one of the first opinions ever rendered by Judge Newman in this suit, viz, upon "taxation of counsel fees, etc," he said: "This bill was filed because of non-payment of interest, which, under the contract, gave the right to foreclose, and a serious question was made by the pleadings and the proof in the case whether or not the right to foreclose existed at the time the bill was filed. * * * No right can be claimed here in this respect because of any liability incurred by the trustee in the performance of his duties, because it appears from the evidence that the trustee required an agreement that he should not be responsible for counsel fees before he would *allow the use of his name* in the suit; and the cause has really more the appearance of the *holders* of these obligations proceeding through the trustee, *as a mere nominal party*, than the act of a trustee in the discharge of the duty incumbent upon him by virtue of a trust which he had assumed and agreed to carry out," etc. (1st. Pr. Rec., pp. 158, 159.)

But when it is sought to enforce the trust through the trustees, in the absence as parties of the beneficiaries, *all* of the trustees are absolutely necessary parties.

McRea *vs.* Branch Bank, 19 How., 376;
O'Hara *vs.* MacConnell, 93 U. S., 150;
Thayer *vs.* Life Ass'n, 112 U. S., 717;
American Bible Soc'y *vs.* Price, 110 U. S., 61;
Foster's Fed. Prac., Vol. 1, p. 130.

Being thus a necessary party his citizenship is material, and is to be determined, not by the position on the record which the pleader has chosen to assign him, but by his real attitude to the controversy.

In Arapahoe Canal Co. *vs.* K. P. Ry. Co., 4 Dill., 277 (Justice Miller delivering the opinion), a stockholder brought his suit to compel an accounting between his own corporation and another. His own corporation he made a defendant—it being alleged there, as in effect alleged here, that it was dominated adversely.

It was held, that although the corporation was a defendant on the record, its interests and those of the complainant were identical, and that the controversy was really on between the complainant *and his corporation*, on the one side, and the accounting corporation on the other.

The case just cited, it is said in Dillon on the Removal of Causes, anticipated in its reasoning, the Removal Causes, 100 U. S., 457.

Dillon on Removal of Causes, p. 39, Sec. 25.

Besides the Removal Causes, the same principle is decided in—

Harter *vs.* Kernochan, 103 U. S., 562;
Pacific R. R. Co. *vs.* Ketchum, 101 U. S., 289;
Barney *vs.* Latham, 103 U. S., 205;
Carson *vs.* Hyatt, 118 U. S., 279, 286;
Brown *vs.* Murray, Nelson & Co., 43 Fed., 614;
Anderson *vs.* Bowers, 40 Fed., 708;
See also, Old Colony Trust Co. *vs.* Atlanta St. Ry. Co., 100 Fed., 798.

The proposition, as approved in the foregoing authorities, is thus stated: "In determining between whom the controversy exists, the court is not bound by the title of the cause, or by the form of the pleadings, but should examine the record, ascertain the matter in dispute, and arrange the parties on opposite sides of the same *according to the facts*, no matter what their technical place as plaintiffs or defendants may be."

We repeat that no sufficient reason is alleged in the bill in the original cause for making Huguley a defendant instead of a complainant. It is not stated even that he had ever been requested to act or notified, but only that he was adversely interested. Whatever interest he had was as a purchaser under the State sale, and this is shown to have been in full recognition and *subordination to* the trust.

But whether he was technically adversely interested or not, he was a trustee and made a party as such. As a trustee, his interest *was with his co-complainant* or co-trustee, and he was to all intents and purposes, when the line was drawn as required in the decisions quoted, on the *plaintiff's*

side of the controversy. That being so, the controversy could not be said to be one where all the parties on the one side were citizens of different States from all the parties on the other.

The decisions cited have been reaffirmed as late as 151 and 156 U. S., and will be found recognized in Shearson *vs.* Littleton, 105 Fed., 533. It was denied to be applicable in that case, however, because the defendant there was a merely nominal party.

The record also discloses that a large number of the bondholders, representing in amount, $20,000.00, exclusive of interest, had not only not participated or joined in the foreclosure but protested and repudiated from the inception the action of the trustee in bringing said suit. It is further shown on the face of the record that even the other or majority wing of the bondholders, representing $45,000.00 in amount, who consented to participate in the first foreclosure sale, after said sale had been reversed, annulled and set aside, and a decree for the rents and profits awarded in favor of the Huguley Manufacturing Company, as interveners, even these original complainants joined with the minority bondholders in utterly refusing to permit the use of their bonds in the payment of the bid at the second attempted and premature sale of May 6, 1896, and notwithstanding they were entitled, under the direction of the court, to realize far above par, only under judicial pressure reluctantly accepted, some three years afterwards, a dividend of less than 65% on their holdings, the rents being pocketed by the West Point Manufacturing Company. The citizen-

ship of the holders of none of these bonds was made to appear, and had it been shown, and had these bondholders been joined, it would have ousted the jurisdiction of the court. This the court was bound to have inquired into in that it undertook to settle the conflicting equities of a quadrangular contest under a single decree adjudicating or seeking to settle and reconcile the rights of all—a sheer impossibility.

Again the record discloses that neither the Alabama and Georgia Manufacturing Company, of Alabama, the mortgagor corporation, nor the Huguley Manufacturing Company, of Alabama, the owner of the equity of redemption to the entire Cotton Mill Plant and village and all tenements, appurtenances, etc., through a quit-claim deed from W. H. Huguley & Company in payment of its capital stock, were ever made or served as parties to the said original bill of foreclosure, and never appeared in said suit. Indeed, it appears on the face of the record that, barring a service upon N. J. & T. A. Hammond, in their capacity of solicitors solely, there was in fact no legal service ever made or any appearance entered in so far as the Alabama and Georgia Manufacturing Company, of Georgia, or of the Huguley Manufacturing Company, of Georgia, were concerned, not one of the regular officers or agents of either of said corporations even of Georgia having ever been duly and properly served, as required by law. (1st Printed Rec., pp. 10— and Condensed Printed Record, or Extracts, pp. 10–11, used on application for *certiorari*.) On its face, also, it is made manifest that the President of the Alabama and Georgia Manu-

facturing Company, W. H. Huguley, himself then a resident and citizen of Chambers County, Alabama, was never notified or served in any capacity, whether by bondholder or trustee, as required by the express terms of the trust deed, or by any officer appointed by the court, as expressly required by law.

Code of Alabama, Sections 1234 and 3274;
Code of Georgia, Section 1899 (3369);
See also Swan Land & Cattle Co. *vs.* Frank, 148 U. S., 604.

"The question whether or not jurisdiction has been acquired by a proper service of process is one which involves the jurisdiction of the court, within the meaning of the Act of Congress of March 3, 1891, Sec. 5, providing for an appeal from the District Court directly to the Supreme Court of the United States when the jurisdiction of the former court is involved."

Shepard *vs.* Adams, 168 U. S., 608, 602.

"A corporation is, and while its corporate existence lasts, must remain, a citizen only of that State which gave it life."

United States *vs.* Southern Pacific R. R. Co., 49 Fed., 303;
St. Louis *vs.* Wiggens Ferry Co., 11 Wall., 423, 192;
St. Joseph & Grand Island R. Co. *vs.* Steele, 167 U. S., 659, 663;
Ohio, etc., R. R. Co. *vs.* Wheeler, 1 Black, 286.

"The defendant being a corporation of the State of Alabama, has no existence in this State as a legal

entity or person, except under and by force of its incorporation by this State; and, although incorporated in the State of Tennessee, must, as to all its doings within the State of Alabama, be considered a citizen of Alabama, which cannot sue *or be sued by another citizen of Alabama in the courts of the United States.*"

Memphis & Charleston R. R. Co. *vs.* Alabama, 107 U. S., 581, citing:

Ohio & Miss. Railroad Co. *vs.* Wheeler, 1 Black, 286;
Railway Co. *vs.* Whitton, 13 Wall., 270, 283.

"For the purpose of determining the jurisdiction of the Circuit Court of the United States, a corporation chartered by several States must, when sued in either State, be treated as a citizen of that State alone, without regard to where it has its principal place of business."

Shaw *vs.* Mining Co., 145 U. S., 449;
Morawitz on Corporations, Secs. 996, 999;
Railway Co. *vs.* Whitton, 13 Wall., 283;
Nashua & Lowell R. R. Corp. *vs.* Boston & Lowell R. R. Corp., 136 U. S., 356;
Graham *vs.* Boston, H. & E. R. Co., 118 U. S., 161.

Referring to the case of Ohio, etc., R. R. Co. *vs.* Wheeler, 1 Black, 286, Mr. Carter, in his "Jurisdiction of Federal Courts," p. 79, says:

"However misleading the fact of the single name in both States, the single objective purpose, or the community of interest may be, the fact must remain that in legal effect there is a distinct corporate entity in each State, owing its paternity to that State alone. To adopt the language of the Court in Ohio, etc., R. R. Co.

vs. Wheeler, 'the President and Board of Directors of the Ohio and Mississippi Railroad Company is, therefore, a distinct and separate corporate body in Indiana from the corporate body of the same name in Ohio.'

"Although two corporations of different States unite their interests, and the stockholders of the one become the stockholders of the other, and their business is conducted by the same directors, the separate identity of each, as a corporation of the State by which it was created and as a citizen of that State, is not thereby lost."

And again:

"A corporation made up of distinct companies chartered by the legislatures of different States, with a capital stock which is a unit, and only one set of shareholders, who have an interest by virtue of their ownership in all of its property everywhere, being in its organization and action and the practical management of its property one corporation, having one board of directors, has a domicile in each State, it is a separate corporation, governed by the laws of that State as to its property therein."

Nashua & Lowell R. R. Corp. *vs.* Boston & Lowell R. R. Corp., 136 U. S., 356, 363;

Graham *vs.* Boston, H. & E. R. Co., 118 U. S., 161.

"When a want of indispensable parties cannot be supplied without ousting the jurisdiction of the court, the bill should be dismissed."

Northern Indiana R. Co. *vs.* Mich. Cent. R. Co., 15 How., 233.;

Louisville, New Albany & C. R. Co. *vs.* Louisville Trust Co., 174 U. S., 552.

Duty of Circuit Court to dismiss suit if parties improperly or collusively joined or made for the purpose of creating a case of which that court would have cognizance, and an injunction will lie to prevent an execution of the decree.

Hawes *vs.* Contra Costa Water Co. (and *vs.* Oakland), 104 U. S., 450; Works on Courts and Their Jurisdiction, p. 104, citing Shryer *vs.* Urner.

"Judgment of Circuit Court will be reversed by Supreme Court of United States for a defective averment of citizenship, upon its own motion, and the case remanded."

Denny *vs.* Pironi, 141 U. S., 121;
Anderson *vs.* Watt, 138 U. S., 694;
Morris *vs.* Gilmer, 129 U. S., 315, 325.

V.

Original Bill Void for Want of Jurisdiction of Parties and of Subject-Matter—Even if Regular and Jurisdiction had Attached, the Decree having been Fully Executed, Impossible for Ancillary Bill Now to be Maintained.

Here then was a case of a bill for foreclosure filed in a State other than that in which the land and other property were situated, to which neither mortgagors, mortgagees, or owners of the equity of redemption were parties.

Upon the face of the record, jurisdiction could not possibly attach, but the case was tried and a void decree entered disposing of not only the interests before the court but of those which were not.

Under this void decree a sale was made in Georgia of property in Alabama, and a deed executed and delivered by a commissioner appointed by the court and not otherwise. After this void sale under a void decree under void proceedings, and after the case was finally closed and the funds in court distributed, the Circuit Court, without attempting to revive or reinstate the case, treated it as still pending in court, for the purpose of tacking on a so-called "ancillary bill."

An ancillary suit is one in aid of an original suit. Where a court has no power to issue any orders or in any way to proceed with an original suit it can do no more with an ancillary suit based upon it.

The general rule is well stated by Freeman on Executions, Sec. 19, with cases cited, in the following words:

> "When a judgment or decree has by payment or otherwise lost its original force the case presented is very different from that where the mere evidence has been lost; when satisfied, the judgment has fully accomplished its mission and the preponderance of authority is in favor of disregarding as absolutely void all proceedings taken subsequently to the satisfaction."

And the effect of any void proceeding is thus stated:

> "A void judgment is in legal effect no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void. * * * It does not terminate or discontinue the action in which it is

entered nor merge the cause of action and it therefore cannot prevent the plaintiff from proceeding to obtain a valid judgment upon the same cause either in the action in which the void judgment was entered or *in some other action.*

Ibid, Sec. 118, and many cases cited.

And it is evident that such void judgment cannot bind the defendant any more than the plaintiff.

"The dominion of a court over a railroad (or other property) sold by its decree entirely ceases upon the conveyance thereof to the purchaser."

Central Bank *vs.* Hazard, 49 Fed., 293.

This is the rule even where proper jurisdiction exists; which in this matter we utterly deny. Before the proceeding was instituted of which we complain, the original case had passed by appeal beyond the reach of the Circuit Court; and besides, the decree, which the court claims to protect by these so-called "ancillary" proceedings, had been fully executed by sale and deed when suit in the Alabama court was commenced, so that there was absolutely nothing left in the said Circuit Court to which any ancillary proceedings could possibly attach, even had the prior proceedings been valid, which we deny, and which the record herein clearly negatives.

The case of Glenn *vs.* Liggett, 51 Fed., 381, is in point. The Circuit Court of Appeals said therein:

"A suit in a Federal court by a stockholder in behalf of himself and other stockholders against a corporation and its officers, seeking by injunction to correct abuses

of administration, alleging insolvency and asking the appointment of a receiver to wind up the business and pay the debts of the corporation, is not identical as to interests of parties with a subsequent suit in a State court by a judgment creditor in behalf of himself and other creditors to ascertain the validity of a deed of assignment from the corporation to certain trustees, and asking the appointment of a receiver with power to collect all assessments that may be made on the capital stock, and otherwise care for and collect the assets and credits of the corporation; and the pendency of the former suit and the appointment of a receiver therein does not deprive the State court of jurisdiction to entertain the latter."

"In such case the general rule that in cases of concurrent jurisdiction, the jurisdiction of the court first taking control of the property is exclusive, does not apply, it appearing that the receiver appointed by the Federal court never had actual possession of the corporation's property, excepting an insignificant portion which was sold and the proceeds applied to the expenses of the receivership, that no assessments were ordered by that court, and that the receiver was discharged and the case dismissed before any steps were taken in the State court for the acquisition or distribution of any property."

Glenn *vs.* Liggett, 51 Fed., 381.

"A resident and citizen of Maryland, who was a stockholder in a West Virginia corporation, brought a suit in the Federal court in West Virginia against the corporation for the appointment of a receiver for its property which was situated in Maryland, with authority to complete and furnish an unfinished hotel

building thereon and to issue receiver's certificates thereon. Lienholders, who were citizens of Maryland, were made defendants, but in an amended bill only the corporation was named as defendant. A receiver was appointed who completed the building, issuing receiver's certificates for the cost. The Maryland lienholders, on their application, were permitted to become parties and to prove their liens. Under a subsequent order the property was sold and an order distributing the proceeds made, which gave the receiver's certificates priority. *Held* that the bondholders were *necessary parties* to the suit and being *citizens of the same State as complainant, and the property being situated outside of the district, the court was without jurisdiction.*"

White *vs.* White, 7 Gill & J., 210.

So that, even if all the proceedings had been regular in a court of competent jurisdiction, and a sale made under the decree, the court rendering the decree could not enjoin a subsequent action seeking to attack the jurisdiction of the court rendering it.

The execution of a decree can be protected by ancillary proceedings, but an executed decree cannot. The decree if valid is an absolute bar in every court. If void it does not constitute a bar in any court.

"After a decree has been completely carried into execution, a motion for an injunction cannot be made in the cause as it is out of court."

Kerr on Injunctions, p. 662.

To hold that a court rendering a decree could, after its execution, enjoin an attack upon it in another court upon the ground of want of jurisdiction, would be to overturn all of the principles of jurisdiction. In the instant case, if the United States Circuit Court had no jurisdiction to dispose of the lands and property on foreclosure, it had no power to restore them on redemption, and the parties in interest could not proceed in that court. If the United States Circuit Court had jurisdiction over the foreclosure suit, then the Alabama State Chancery Court will so hold and the decree of the former might constitute a complete defence. The bill in Alabama avers that all of the property lies in the State of Alabama. If this be established, the United States Circuit Court undoubtedly never had any jurisdiction. If the allegations in that bill, as filed in the Alabama Chancery Court, be not established, the Alabama Court will decree that it has no jurisdiction and will dismiss the suit. This question was not tried in the original suit and would not have been tried, as the parties in interest were not before the court, and had they appeared, the jurisdiction of the said United States Circuit Court, with equal certainty, would have been ousted. This question or issue constitutes an absolute and distinct cause of action which the parties in interest have a right to try in the Alabama court, which, on the contrary, has full and complete jurisdiction over the parties and the subject-matter, and especially so as the United States Circuit Court, for the Northern District of Georgia, had jurisdiction over neither and does not now have such jurisdiction.

VI.

Reasons Why Injunction, Under So-called "Ancillary" Proceeding in the United States Circuit Court, for the Northern District of Georgia, Cannot be Maintained to Stay Independent Suit in the Chancery Court of Alabama, Involving Different Parties, Different Subject-matter, etc.

I.

Before an ancillary bill can be maintained the complainant and defendants both must have been parties to or privy to the former proceeding, and also parties to or privy to the proceeding sought to be enjoined.

If the complainant is a party to the original Robinson proceeding, it certainly is not a party to the Alabama suit. In that suit the Riverdale Cotton Mills, a corporation under the laws of *Alabama*, and as shown on face of the record, specially licensed to transact its business "*at Riverview, Alabama, only*" (the name of the factory town), is a defendant, and not the corporation of like name chartered under the laws of *Georgia*, which is the complainant in the present ancillary bill. Here then we have a party who is not sued in the Alabama suit, attempting to enjoin proceedings against the five defendants who are sued, neither of whom joins in the present bill filed in the United States Circuit Court.

It is impossible that such bill could be maintained.

II.

Neither of the corporations, made defendants to the ancillary bill, is a party to the bill in Alabama; nor were they parties to the original Robinson suit. Two corporations, alleged in the bill in the Robinson suit to have been chartered under the laws of the State of *Georgia*, were made defendants, while two corporations of the same name, originally first chartered and organized under the laws of Alabama, are the complainants in the Alabama suit.

It is unquestionably the law that the Alabama corporations—there having been no merger with the *later* Georgia corporations—are distinct legal entities, and are citizens of the State of Alabama for all purposes of jurisdiction. They could not have been joined in the original suit without ousting the jurisdiction of the court. This is so because they were citizens of the State of Alabama, while Robinson, trustee, was and is himself a citizen of the same county and State. They are none the less citizens now than then, and if these corporations were separate legal entities then, they are now.

If the present proceeding can be maintained, the United States Circuit Court can determine controversies between citizens of the same State by the simple process of entertaining a bill filed by a citizen of some other State against a citizen of Georgia who may be a proper party, and thus acquire jurisdiction; and by subsequently proceeding by way of *ancillary bill* against any other citizen of the same State with the original complainant, who may attempt to assert claims against the property involved in the original executed suit.

If the Circuit Court of the United States could not have determined the rights of The Alabama and Georgia Manufacturing Company and The Huguley Manufacturing Company in the *original* proceeding, it is certain it cannot determine their rights in respect to this property in an *ancillary* proceeding. It cannot do indirectly what it could not have done directly.

III.

Nor is the subject-matter of the proceeding in Alabama the same as the subject-matter of the proceeding in Georgia. The issues in Alabama are not the issues determined in the original suit, but the proceeding presents the question of the *effect* of the decree rendered in the cause, and of the sale had under it. There is also raised in the Alabama suit a question of the boundary between the two States—whether the lands and property thereon located, sold under the original decree, are situated in Alabama wholly or partly, or partly in Georgia. That was not an issue tendered by the bill in the original cause, and certainly was not an issue determined against persons who were not parties to that decree. No matter what issues were presented in the original cause, and no matter how conclusive of every question presented in the Alabama suit they may have been, or might now be as between parties to that cause, the determination of the questions in that suit cannot affect outside parties, not parties to the decree and not privy to the parties to the decree.

The Alabama corporations certainly occupy that relation.

IV.

Aside from the considerations, already mentioned, the defendants to the Alabama bill have all appeared in that court, answered, pleaded and demurred to the bill, and have thus presented issues of law and fact for the determination of that court. This occurred *before* the filing of the bill in the United States Circuit Court. It is in direct violation of the very principle which the complainant in the so-called ancillary bill invokes, if, after appearing and presenting the issues in Alabama, that corporation can now be permitted to enjoin that suit and present the same issues in the United States Circuit Court.

V.

We thus have a proceeding called an "ancillary" proceeding, brought by one not a defendant to a suit in a foreign jurisdiction, to enjoin the further prosecution of that suit against four defendants (because of another bearing its own name), but created in a foreign jurisdiction. The bill is filed against the complainants in the Alabama suit, who are distinct and different parties from the defendants in the original case and do not claim in privity with them. Thus we have a case which, instead of disclosing the elements necessary to a maintainable ancillary bill shows directly the reverse—that it does not possess a single characteristic of such a bill when properly filed, when, to succeed, it must possess *all*.

VI.

In addition to authorities already cited and quoted, we cite the two cases of Taylor *vs.* The Royal Saxon, 1 Wall, Jr., C. C. 311, and "Certain Logs of Mahogany," 2 Sumner, 589, to the further proposition that an ancillary proceeding cannot be sustained where the purpose is to stay a suit between persons whose relations to the two cases are *reversed* from that sustained by the same persons in the original suit. As, for illustration, where the defendants in the original cause are complainants in the suit sought to be enjoined.

VII.

Whatever may be the effect of the decree of foreclosure rendered in the Robinson case—whether it could pass the title to the entire property, Cotton Mill Plant and village, etc., lying in the State of Alabama, as shown on the face of the record, as well as the detached, isolated islands claimed to be in Georgia, on the idea that the entire property was indivisible—it is certain it could not pass the title in such sense as to deprive an Alabama corporation from insisting in the courts of Alabama that the property belonged to *it*, and not to the corporation of the same name afterwards merely chartered under the laws of Georgia. If the property is indivisible, which is expressly denied in the Alabama bill, and plainly refuted on the face of the description in the record, so that a jurisdiction over a part—the said islands—confers the power to sell the whole—the said lands and Cotton Mill Plant and village, etc., thereon, in Alabama,—certainly the two corporations are not divisible so that jurisdiction over one conferred power to divest the title of the other.

But at last the right to maintain the Alabama suit must be determined by the pleadings in that suit, and not on proof of a contrary state of facts if made before the Circuit Court.

It is claimed that, whereas, in the Alabama suit it is alleged that the Alabama corporations are the owners of certain property, the suit ought to be enjoined because they are in fact not the owners.

And whereas, it is alleged in the Alabama suit that the property described was situated in the State of Alabama and was divisible, that suit ought to be enjoined because such is not the fact.

An ancillary bill cannot be predicated on any such theory; but can alone be sustained when at least three facts concur:

1st. That the complainant was a party or privy to the original suit, and is also a party to the suit sought to be enjoined.

It affirmatively appears that this is not the case.

2d. That the complainant in the suit sought to be enjoined was a party to the original suit.

It affirmatively appears that this is not the case.

3d. That it is sought to reopen in the enjoined suit questions which were determined or might have been determined in the first suit, and that the court had jurisdiction to determine them as well as jurisdiction of the second cause.

These essentials do not appear, and certainly do not appear on the face of the Alabama bill.

4th. That the complainant in the ancillary proceeding has not submitted to the foreign jurisdiction.

It affirmatively appears that, if a party at all, it has so submitted.

Not only, therefore, is the proceeding untenable as an ancillary bill, but it also affirmatively appears, we repeat, that the jurisdiction of the Alabama court to determine all the questions presented there had fully attached before the bill in the United States Circuit Court was filed.

In Ralston *vs.* Sharon, 51 Fed., 702, it was held as follows:

> "It being alleged in the bill that all the parties to the suit were citizens of the State the court has no jurisdiction as defendants, *not having been parties to the former suit*, and not being the personal representatives of the defendant, and the property, which was the subject of the former contest, *not being any longer subject to the order of the court*, the bill was an *original* one, not dependent upon or ancillary to the original suit, *and a State court of equity could give full relief.*"

VII

It is Disclosed on Its Face that the Record is out of the Circuit Court of the United States for the Northern District of Georgia, and is Now in the United States Supreme Court, on Appeal from the Circuit Court of Appeals, and any Application for Ancillary Relief Must Start in the Supreme Court.

A diligent search has failed to reveal any case wherein an *inferior* court has sought to interfere, by ancillary proceedings,

in a suit pending in a superior court. It is probable that the District and Circuit Judges in the United States courts have hitherto presumed that the Supreme Court of the United States would take all proper proceedings in cases pending before that august tribunal. At any rate the petitioners have been unable to find any authority as to how far the Circuit Courts of the United States can issue proceedings ancillary to a suit pending in the Supreme Court of the United States.

The original suit for foreclosure, and all after-proceedings growing out of the same, are now pending in the United States Supreme Court on appeal, and an application has been made for a *certiorari* in order to complete the record. The Supreme Court or the Circuit Court of Appeals, Fifth Circuit, or the United States Circuit Court for the Northern District of Georgia, cannot place the mortagors in possession or allow them to redeem, for the reason that the property is in the State of Alabama, and cannot be reached with any mandate to the State court or any writ of assistance or restitution by any court except the State Court of Alabama, or by this honorable Court taking cognizance of the whole matter in controversy.

Neither the parties in interest or the property involved come within the jurisdiction of the Circuit Court of the United States for the Northern District of Georgia. No possible alignment of parties could give that Circuit Court jurisdiction in an accounting or a redemption suit. If the appeal is sustained, and the cause should be reversed and remanded, the State Court of Alabama must settle the

subsequent rights of the parties, and if the appeal is dismissed, the question of nullity, by reason of lack of jurisdiction, is still to be determined by the State Court in Alabama. It is, therefore, manifestly to the interest of all parties that the suit in Alabama proceed without delay. This would appear to be the view of all parties to that suit, as none of those interested has complained, the only complainant being the Riverdale Cotton Mills, a Georgia corporation, which is not a party to the Alabama suit, and has no interests involved in that litigation so far as has been disclosed in any proceedings.

If the temporary injunction be allowed to remain, it will needlessly delay the petitioners; if they are successful, it will entail additional damages to be paid by those claiming under the decree, and if petitioners are unsuccessful in their appeal, it will entail upon both them and those who resist their claims, needless expense and litigation. It is a self-evident proposition that if petitioner show a total lack of jurisdiction in the Circuit Court to determine the previous case, they will be successful. If their appeal be dismissed, this question is still open, and if their appeal be sustained and the case dismissed *ab initio*, the Alabama suit must continue until it is finally determined. The suit in Alabama is not to hinder but to further justice and to assist, not to retard, the proceedings necessary to an adjudication of the rights of all parties.

Second.

WHY WRIT OF PROHIBITION SHOULD LIE.

I.

Our petition, in view of the facts and principles above set forth, prays for a writ of prohibition or of mandamus in order to right the wrongs complained of.

We are confident that a writ of prohibition is available because the power to issue it is an essential and inherent attribute of sovereignty itself; and therefore always existed at common law, and has not been taken away, and we venture to say, cannot be taken away by any act of the legislature from the courts possessing it.

We are aware that Section 688 of the Revised Statutes has been claimed to divest the Supreme Court of all power to issue a writ of prohibition except to the district courts when acting in admiralty, and, strange to say, it has been so decided in some of the earlier cases, although the contrary is certainly held by the late cases, as we shall hereafter notice.

And no valid reason can be shown for restricting the power to issue such a writ to admiralty cases. It is evident that precisely the same necessity may arise in any other kind of jurisdiction to resort to the remedy afforded by the writ, as in an admiralty jurisdiction. It is a fixed maxim of the law that where the reason of the law ceases the law itself ceases. And is not the converse equally true that where the reason of a law operates, such reason furnishes a standard of interpretation of a statute? And therefore is

not the Act of 1789, above cited, to be regarded not as a restrictive but rather as an enabling act; although, as we think, superflous even in this view, and merely declaratory as far as it goes?

It does not even purport to limit the power of the Supreme Court, and it is not therefore to receive such a construction.

Thus, in the libel case of Jacobs *vs.* Brett, 32 L. T., 523, Sir G. Jessel, speaking of statutory regulations on the matter of prohibition, said:

> "In order to take away a right the act must be in clear terms. It is not to be assumed that the legislature intended to take away rights, unless there is not merely an implication to that effect, but a necessary implication. Another principle of law is that the rights of the Queen's subjects are general rights and are not to be taken away without express words. * * * Now here the subject has a right and a valuable right. Is it to be implied that this right is to be taken away, and that the inferior court is to be the judge of its jurisdiction? If the 15th section has this meaning, that you cannot interfere by prohibition, the result would be to deprive the defendant of all means of restricting the jurisdiction of the court in the case mentioned in the 12th section."

The objection urged against issuing the writ was based on section 15 of an act which provided that "no defendant may be permitted to object to the jurisdiction of the court by any proceeding whatever except by plea;" and it was affirmed that the petitioner had not pleaded. But the

court held that this statutory provision did not bar the writ of prohibition.

It will be observed that said statute was actually restrictive while ours is not.

In another case, involving the right to issue a writ of prohibition in the English courts, it is said :

> "In construing statutes or customs relating to inferior courts, the jurisdiction of the superior courts is not to be ousted unless the inference to be drawn from the statute or custom to the contrary is obvious."
>
> Bram *vs.* Brearey, 36 L. T., 475.

In fact, the entire section 688 of our Revised Statutes should be construed together, so that the writs of prohibition and mandamus are to be regarded as having a similar range of operation. The two writs are in their very nature correlative and stand upon the same ground of necessity. One is positive, the other negative, and each the counterpart of the other. Mandamus positively commands a right act to be performed ; prohibition forbids a wrong act beyond jurisdiction to be done. There is precisely the same reason for their issuance, each in its appropriate sphere ; and prohibition is as necessary often in other matters as in admiralty proceedings.

In England the jurisdiction to issue a writ of prohibition in admiralty cases has been disputed, while acknowledged in all other cases. And this may explain why our statute, extending the writ to admiralty jurisdiction, was passed in 1789.

As to the power to thus act in regard to admiralty, Willes, J., in James *vs.* Railway Co., 27 L. T., 383, said :

> " I do not call it an inferior court, but treating it as a superior court with a limited jurisdiction, it is subject to prohibition ; though superior in name, like many other courts nominally superior but still liable to prohibition, their jurisdiction being limited."

We ask again, why should the district courts be liable to a writ of prohibition when acting as courts of admiralty, and yet, when acting in other capacities, be regarded as so infalliable as not to need subjection to the writ? Where is the reason for the special power supposed?

II.

The Power Exists at Common Law and is Not Merely Statutory.

In Cox *vs.* Mayor, L. R., 2 H. L., 239, Willes, J., said : " Not only does the common law give remedy for any excess of jurisdiction, but," etc. The case was not in admiralty, but merely involved a question of garnishment. The exercise of the right may be regulated by statute, but we apprehend cannot be taken away by statute, because ——

III.

The Power is an Essential, Inherent Right of Sovereignty, which, therefore, Cannot be Abandoned or Destroyed.

Hence, in the case of Cox *vs.* Mayor, *supra*, in the House of Lords, it was declared that it was not merely in order to

protect a suitor, or to right an individual wrong, that a writ may issue.

It was said therein: "The proceeding in prohibition does not stand upon the footing of an action for a wrong. In a prohibition for want of jurisdiction the question is not whether the party or the court has done a wilful wrong, but whether the court has or has not jurisdiction. (Ede *vs.* Jackson Fortesc., 345)".

The whole range of the writ is elaborately set forth in the case of Worthington *vs.* Jeffries, 32 L. T., 607, as to its origin, functions, and history, thus:

> "It seems to us advisable to draw attention again to the origin and reason of the writ of prohibition and to the history of the procedure by which it has at different periods been enforced. As all external jurisdiction, whether ecclesiastical or civil, is derived from the crown and the administration of justice is committed to a great variety of courts, hence it hath been the case of the crown that these courts keep within the limits and bounds of their several jurisdictions presented them by the laws and statutes of the realm. And for this purpose the writ of prohibition was framed which issues out of the superior courts of common law to restrain inferior courts." (Bacon's Abridgment.)
>
> "The object of prohibition in general is the preservation of the right of the King's crown and courts, and the ease and quiet of the subject." (*Ibid.*) "The King may sue for a prohibition, though the plea in the spiritual court be between two common persons, because the suit is in derogation of his crown and dignity." (*Ibid.*)

"It is *contra coronam et dignitatem regiam*, for any to usurp to deal in that which they have not lawful warrant from the crown to deal in or to take from the temporal jurisdiction that which belonged to it. The prohibitions do not import that the ecclesiastical courts are *aliud* than the King's, or not the King's courts, but do import that the cause is drawn into *aliud examen* than it ought to be, and therefore it is always said in the prohibitions (be the court temporal or ecclesiastical to which it is awarded), if they deal in any case of which they have not power to hold plea, that the cause is drawn *ad aliud examen* than it ought to be, and therefore, *contra coronam et dignitatem regiam*." (2nd Answer in Article Cleri., 2 Inst., 602.)

"None may pursue in the ecclesiastical court for that which the King's courts ought to hold plea of, but upon information thereon given to the King's court either by the plaintiff, or by any mere stranger, they are to be prohibited because they deal in that which appertaineth not to their jurisdiction." (*Ibid.*, 10th Answer.)

"And in the judgment of Willes, J., in Cox *vs.* Mayor of London, L. Rep., 2 H. L., 239, which seemed to exhaust all learning and ingenuity upon the questions of prohibition, this point is thus treated:

"'All lawful jurisdiction is derived from and must be traced to the royal authority. Any exercise, however fitting it may appear, of jurisdiction not so authorized is an usurpation of the prerogative and a resort to force unwarranted by law. Upon both, namely, the infringement of the prerogative, and the unauthorized proceeding against the individual, prohibitions by law are to be granted at any time to restrain a court to intermeddle

with or execute anything which by law they ought not to hold plea of, and they are much mistaken that maintain the contrary.'

"These authorities show that the ground of decision, in considering whether prohibition is or is not to be granted, is not whether the individual suitor has or has not suffered damages, but is whether the royal prerogative has been encroached upon by reason of the prescribed order of administration of justice having been disobeyed. If this were not so, it seems difficult to understand why a stranger may interfere at all. * * * If it is the absolute duty of the superior court to enforce order on being convinced of a breach of it, by information given by the defendant in the court below, why should it be a less absolute duty if it is convinced of the same breach of order by information given by a stranger? Order is no less broken, the prerogative is no less invaded."

IV.

Therefore, on Due Reason Shown, a Superior Court is Judicially Bound, as a Debt of Justice—Ex Debito Justitiæ—and not merely by Virtue of and in Obedience to a Mandatory Statute, to Grant a Writ of Prohibition.

In the case of Worthington *vs.* Jeffries, *supra*, wherein the matter in dispute was only eleven pounds on account, which amount was beyond the jurisdiction of the lower court, Brett, J., said:

"It is also agreed that if the defendant in an inferior court make it clear to a superior court, both in fact and in law, that the inferior court is proceeding without or beyond jurisdiction, the superior court is judicially

bound, *ex debito justitiæ*, to issue a writ of prohibition. In such case, when the defendant below is the applicant for prohibition, it is admitted that the superior court has no discretion to refuse to prohibit on the ground that the amount in dispute is small, or that the application is made late, or on any similar ground."

And in Cox *vs.* Mayor, *supra*, Willes, J., on the matter of discretion and imperative duty, said :

"The law upon the question of discretion is thus stated in the judgment of the Queen's Bench, in Bender *vs.* Veley, 12 Ad. and E., 263 : 'If called upon we are bound to issue our writ of prohibition as soon as we are duly informed that any court of inferior jurisdiction has committed such a fault as to found our authority to prohibit, though there may be a possibility of contesting it by appeal. * * * The question then remains, what are the defects that authorize and require us to issue the writ of prohibition? The answer is that they are in every case of such a nature as to show a want of jurisdiction to decide the case before them. (Gardner *vs.* Booth, 2 Salk's, 548.) In whatever stage that fact is made manifest to us, either by the crown or by one of its subjects, we are bound to interpose."

In the Rolls Court, Sir G. Jessel said :

"It is plain that any one may interpose to inform a superior court that an inferior court is exceeding its jurisdiction. The crown or any subject may do so, and it is the duty of the superior court to confine the inferior court within the limits of its jurisdiction."

Jacobs *vs.* Brett, 32 L. T., 523.

"If the whole matter before the inferior court is beyond its jurisdiction, then a prohibition ought to go."

Reg. *vs.* Twiss, 20 L. T., 525.

V.

Even in a Court of Admiralty the Right and Duty to Issue a Writ of Prohibition Does Not Depend on the Merits of the Case.

Thus, in James *vs.* Railway Co., 26 L. T., 191, a prohibition was allowed, although reluctantly. Kelly, C. B., said:

> "It is with very great regret that I feel myself compelled to hold that the plaintiff is entitled to the judgment of the court. I say it is with very great regret, because I think it is manifest that, upon the facts, the justice and the merits of the case are altogether with the defendants in prohibition. * * * But, looking at the facts of this case and the proceedings in the Court of Admiralty, I am clearly of opinion this writ of prohibition ought to go on the ground that the Court of Admiralty was proceeding at the time when the motion was made and at the time of the declaration in prohibition, without jurisdiction."

He continued:

> "At a very early period of the argument we intimated our opinion that if the Court of Admiralty be really proceeding in the suit without jurisdiction, the writ of prohibition will lie in this or in any of the superior courts of law, without any reference to the nature of the constitution of the court, and consequently the only question is, was there or was there not jurisdiction to entertain this suit at the time when the application for a prohibition was made?"

VI.

And Accordingly Not in Any Case are the Merits Considered.

In Hudson *vs.* Tooth, 27 L. T., 465, a prohibition was granted reluctantly; not including the merits of the case. Cockburn, C. J., said:

> "The merits of the case have not, however, come into question, the objection taken being of the most technical character, which might have been obviated in a few minutes, if it had been taken before the hearing. * * * Nevertheless, though we see that it is a matter of the purest technicality, if it goes to the root of the jurisdiction we are bound to act upon it.
>
> "We have not to consider whether the judgment would be reversed or altered before a competent court of appeal. What we have to consider is whether the learned judge has exceeded his jurisdiction."

Again, in Mayor *vs.* Cannot, 24 L. T., 583, involving attachment and garnishment, a prohibition was awarded on the ground that the goods seized in attachment "were not within the jurisdiction of the court, and it is an essential part of all inferior jurisdictions that their power does not extend beyond their local limits." Brett, J., remarked:

> "The pretensions of the Lord Mayor's court seem reduced to an absurdity by the admission that the court assumes to attach goods at Liverpool and even in Australia."

VII.

It is Manifest that in England the Issuance of the Writ is Not Confined to Admiralty, nor is Any Reason there Recognized why it Should be so Restricted.

Besides the miscellaneous cases above cited, we may briefly note what a variety of cases there are in which the writ was issued without a question of the right to do so, as follows:

Reg. *vs.* Recorder of Liverpool, 23 L. T., 813, involves the right of trying an appeal. Prohibition awarded.

Robinson *vs.* Emanuel, 30 L. T., 500, prohibition awarded because parties did not reside within the jurisdiction, although made defendants.

Cocke *vs.* Gill, 28 L. T., 33, was an attachment and garnishment case in the Mayor's court of London, the cause of action not having originated within the jurisdiction. Prohibition was awarded on that ground in favor of the garnishee.

In Bridge *vs.* Branch, 34 L. T., 905, a writ of prohibition was awarded after judgment, which was set aside and the inferior court prohibited from proceeding further in the action.

It has even been issued not only to a court but to an official board.

In Reg. *vs.* Local Government Board, 48 L. T., 181, Brett, L. J., said:

> "My own view is, that the court should not be chary of prohibition, and where the legislature has entrusted

power to a public body to impose an obligation, the courts should exercise their discretion widely, if such public body exceed the jurisdiction so intrusted to them."

VIII.

The Later Decisions of this Supreme Court Forbid the Interpretation Placed on Section 688 of the Revised Statutes, and Recognize the General Nature of the Writ of Prohibition as Defined by the English Courts.

In *Ex parte* Warmouth, 17 Wall., 54, it was merely decided that where an appeal will lie to the Supreme Court this court has no jurisdiction until the appeal is taken, and thus, by implication, when such appeal is taken, a writ of prohibition will lie when needed, and more particularly where an appeal will not lie to the Supreme Court, as, for instance, where the amount involved is not sufficient, a prohibition may be granted. It rests, doubtless, on the principle that a writ of prohibition cannot be used merely as a substitute for an appeal, and does not contradict the doctrine laid down in Hudson *vs.* Tooth, *supra*, namely: "We have not to consider whether the judgment would be reversed or altered before a competent court of appeal." And in Bender *vs.* Veley, *supra*, namely: "If called upon we are bound to issue our writ of prohibition as soon as we are duly informed that any court of inferior jurisdiction has committed such a fault as to found our authority to prohibit, though there may be a possibility of correcting it by appeal." For an

applicant may be entitled to a prompt and adequate remedy such as can only be afforded by such a writ.

It is to be noted that the case cited from 17 Wall. is not in admiralty, but simply involves the right of voting. Therefore, section 688 of the Revised Statutes does not confine the prohibitory power of the Supreme Court to the admiralty jurisdiction of the district courts.

And the same may be said of *In re* Baiz, 135 U. S., 404. This involves no question of admiralty jurisdiction, but only a matter of protecting diplomatic privilege. It has been suggested that this case is based on the ground that suits against ambassadors are originally cognizable only in the Supreme Court. But this is simply urging a distinction without a difference. The only ground of application for the writ was that the lower court did not have jurisdiction of the matter, or rather of the person, and this is the precise basis of the writ in all cases—that is, the lack of jurisdiction.

The court distinctly recognized the right to apply for a writ of prohibition, and said:

> "In this court, exercising its appropriate jurisdiction to entertain an application for a writ of prohibition or mandamus the respondent here is called upon to produce any evidence that exists to countervail the petitioners' proof of privilege."

And the court remarked:

> "The practice in prohibition was formerly to file a suggestion, an affidavit in support of which was re-

quired where the prohibition was moved for upon anything not appearing upon the face of the proceedings."

This case conclusively establishes the proposition that Section 688 does not restrict the power of the Supreme Court to issue writs of prohibition merely to admiralty.

And not only does the Supreme Court exercise the right to issue this prerogative writ itself but also the right to require and enforce the issuance of the writ by a subordinate court.

In Smith *vs.* Whitney, 116 U. S., 172, the question on appeal was whether the Supreme Court of the District of Columbia had committed error in dismissing a petition for prohibition of the proceedings of a court martial. The Supreme Court recognized the common law jurisdiction to issue such writ, without reference to the admiralty statute. It said:

> "It is often said that the granting or refusing of a writ of prohibition is discretionary and therefore not the subject of a writ of error. That may be true, where there is another legal remedy, by appeal or otherwise, or where the question of jurisdiction of the court whose action is sought to be prohibited is doubtful, or depends on facts which are not made matter of record, or where a stranger, as he may do in England, applies for the writ of prohibition. But, *where that court has clearly no jurisdiction of the suit* or prosecution instituted before it, and the defendant therein has objected to its jurisdiction at the outset and has no other remedy, *he is entitled to a writ of prohibition as a matter of right*, and refusal to grant it, where all the proceedings appear of record, may be reviewed on error.

"This is the clear result of the modern English decisions, in which the law concerning writs of prohibition has been more fully discussed and explained than in the older authorities."

The obligatory nature of the writ was recognized in 155 U. S., 396 (*In re* Rice). Therein a petition was filed in the Supreme Court for a prohibition in the matter of a foreclosure on a railroad and appointment of a receiver; and it was entertained, but denied on the ground that the case was not made out. The principle governing the decision is thus broadly stated by the court:

"Where it appears that the court, whose action is sought to be prohibited, *has clearly no jurisdiction of the cause originally or of some collateral matter arising therein*, a party, who has objected to the jurisdiction at the outset and has no other remedy, *is entitled to a writ of prohibition as a matter of right.* But where there is another legal remedy by appeal or otherwise, or where the question of the jurisdiction of the case is doubtful, or depends on facts which are not made matter of record, or where the application is made by a stranger, the granting or refusing of the writ is *discretionary.* Nor is the granting of the writ obligatory where the case has gone to sentence, and *the want of jurisdiction does not appear upon the face of the proceedings.*"

This case also annuls the claim that section 688 restricts the power of the Supreme Court to admiralty proceedings, and fortifies the position that the section was designed to *extend* the power to admiralty. It is to be regarded as

merely a defining statute, as far as it goes, not having the effect, and not being intended to take away the pre-existing power to issue writs of prohibition *ex debito justitiæ*.

~~JOHN T. MORGAN,~~
WELLES, ~~BENNETT & WELLES,~~
JOHN M. CHILTON,
Of Counsel for Petitioners.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Docket No.

THE HUGULEY MANUFACTURING COMPANY, AND THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, PETITIONERS,

versus

HONORABLE WILLIAM T. NEWMAN, JUDGE OF THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF GEORGIA.

Petition for Prohibition, Mandamus, Etc.

BRIEF FOR PETITIONERS.

Alex. C. King ~~& Spalding,~~

Of Counsel for the Petitioners.

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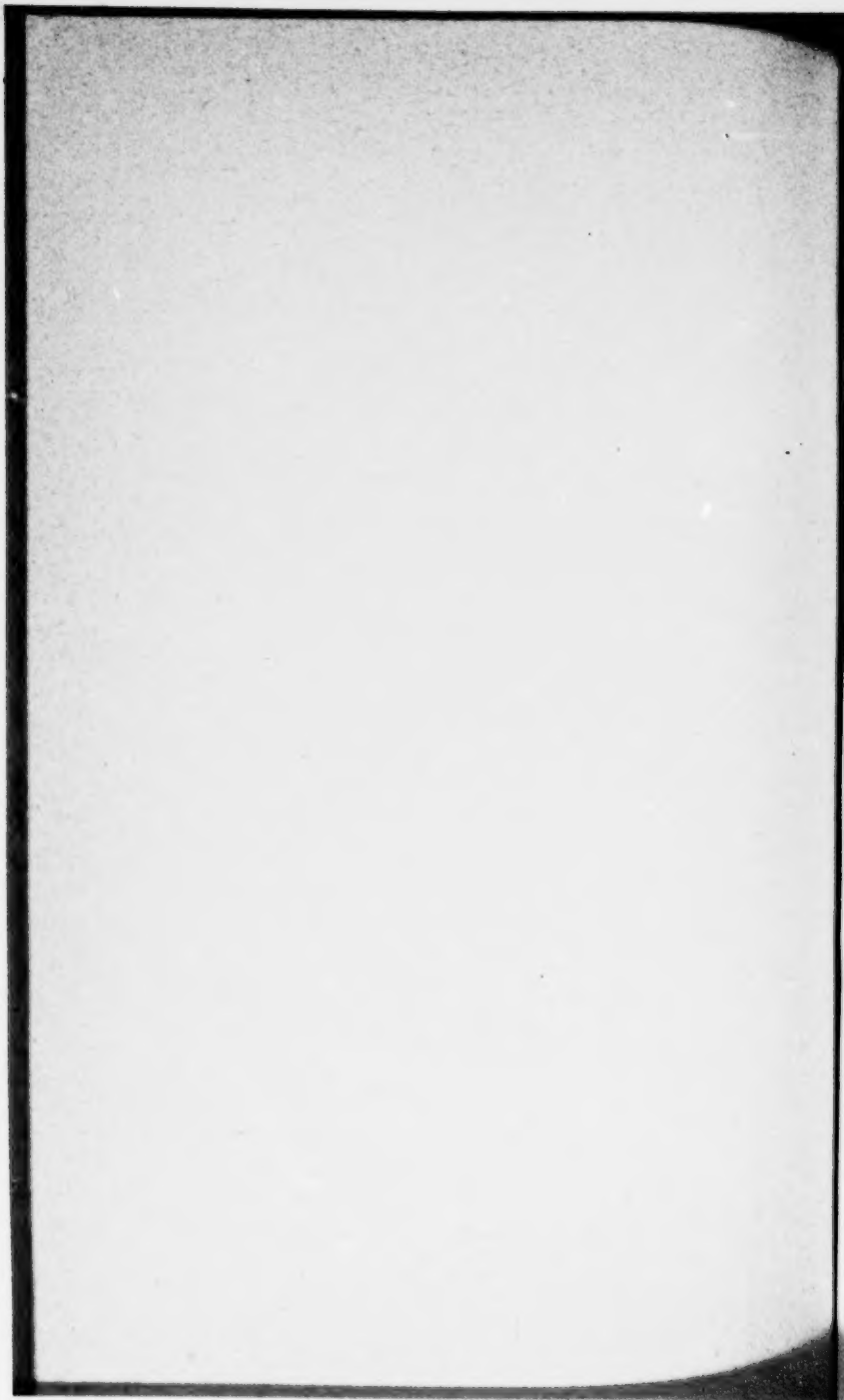

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BRIEF FOR PETITIONERS.

Alex C. KING ~~& SPALDING~~,
Of Counsel for the Petitioners.

BRIEF ON PETITION FOR PROHIBITION, MANDAMUS, ETC.

I.

It is evident that this suit cannot be maintained in the Circuit Court of the United States, for the Northern District of Georgia, as an ancillary bill.

It discloses on its face that the Record is out of that Court in the United States Supreme Court. The decree in the Circuit Court has been executed, and the purchaser, or rather the purchaser's vendee, sues.

(*a*) The jurisdiction depending on that suit is in the United States Supreme Court, and any application for ancillary relief must start there.

Draper *vs.* Davis, 102 U. S., 370.
Ensminger *vs.* Powers, 108 U. S., 293, 302–3.
Keyser *vs.* Farr, 105 U. S., 265.
Citizens Bank of Wichita *vs.* Farwell, 56 F. R., 539.
Morris *vs.* Lawler, 91 F. R., 693.

(*b*) But the relief sought warrants no injunction against the parties to the Alabama suit. That suit is maintained by two Alabama corporations. The suit in the Circuit Court asks injunction against two *Georgia* corporations. These are different persons in law.

Nashua & Lowell R. R. Corp. *vs.* Boston & Lowell R. R. Corp., 136 U. S., 356, 373.

In the cases cited the corporations were all actual *consolidations*, and yet were held separate entities. In the suit in the Circuit Court, there is no incorporation shown under Georgia charters, and the Alabama charters are the oldest and by the incorporation in Georgia no presumption of merger is created.

> Nashua & Lowell R. R. Corp. *vs.* Boston & Lowell R. R. Corp., 136 U. S., 356, 379.

No act shown accepting Georgia charter for the Huguley Manufacturing Company.

Where corporations of like name are chartered by two States, composed of the same parties without more—the acts create a corporation of each State *quoad* the property there situate.

> Graham *vs.* Boston, H. & E. R. R. Co., 118 U. S., 161, 168.

(*c*) But in this case there is now no legal person known as Alabama & Georgia Manufacturing Company of Georgia. It died March 21, 1896.

> West End & Atlanta Street Ry. Co. *vs.* Atlanta Street R. Co., 49 Ga., 151, 153.

Hence said bill was not to reach or control the litigants in the suit in the Circuit Court.

(*d*) But it is not ancillary as carrying into effect unexecuted decrees or controlling decrees of the said Circuit Court. The purchaser under such decree is attacked in his

title. The decrees of the Circuit Court are part of his title, and he relies on them.

Ralston *vs.* Sharon, 51 F. R., 702.
Wood *vs.* New York & N. E. R. Co., 51 F. R., 702; 61 F. R., 236.

That one claims title through a decree of a United States court does not create a federal question so as to give jurisdiction.

Carson *vs.* Dunham, 121 U. S., 421, 429.
Prov. Sav. Soc. *vs.* Ford, 114 U. S., 635.

But if ancillary in the sense that the Court might maintain a suit, it is only ancillary as creating a *concurrent* jurisdiction with the State Court.

R. R. Co. *vs.* R. R. Co., 111 U. S., 505.

The State Court jurisdiction attaching, its exercise not enjoined under Rev. Sts., Sec. 720.

Peck *vs.* Jenness, 7 Howard, p. 320.

That matter might have been set up in the Federal Court by cross-bill—not prevent resort to other Court by independent bill.

Washburn & Moen Mfg. Co. *vs.* H. B. Scutt & Co., 22 F. R., 710.
Christmas *vs.* Russell, 14 Wall, 69.

The parties complainant in the Circuit Court of the United States, for the Northern District of Georgia, have resorted to the State Court, and filed as defenses the same matter set up in the Circuit Court as ancillary. They are therefore committed to that forum.

II.

But the parties filing the Alabama bill were not parties to the litigation in the Circuit Court, and are not bound thereby as to the property in dispute.

Alabama corporations different from Georgia.

Nashua & Lowell R. Corp. *vs.* Boston & Lowell R. Corp., 136 U. S., 356, 373, 379.

No presumption of organization.

Nashua & Lowell R. Corp. *vs.* Boston & Lowell R. Corp., 136 U. S., 379.

Corporations of each State *quoad* property there.

Graham *vs.* Boston, H. & E. R. Co., 118 U. S., 161, 168.

In this case no deed to the Georgia Company was ever shown, and no decree *versus* the Alabama Company.

Alabama incorporation of Huguley Company shows property into it as to property, &c.

See Exhibit to Response. (Transcript, p. 57.) - on Prohibit

III.

No effective sale, conveyance or confirmation under any view against the Alabama & Georgia Manufacturing Company. It had expired before the same occurred.

Charter expired March 21st, 1896.

West End & Atlanta Street Ry. Co. *vs.* Atlanta Street R. Co., 49 Ga., 151, 153.

Suit against *it* fell on such death. Subsequent action a nullity.

Pendleton *vs.* Russell, 144 U. S., 640, 644.
Logan *vs.* Western & Atlantic Ry. Co., 87 Ga., 534.

In this case the decree is wholly against Alabama & Georgia Manufacturing Company, of *Georgia*. Therefore it was an essential party, and as to it the sale and all proceedings are void.

Huguley Manufacturing Company not decreed against.

No *res adjudicata* even where jurisdiction of case pending, as to those not parties.

IV.

But as to lands in Alabama, these belonged to the Huguley Manufacturing Company, an Alabama corporation, paying its capital stock.

It could not be made a party, was not a party, and the decree must be construed as without prejudice to its right.

If it had been brought in as a defendant the Court would have had no jurisdiction of the controversy on the face of the record.

Third parties can show the truth, and as to them no estoppel.

In support of the proposition that W. T. Huguley, co-trustee with Robinson, whose interest was not in fact and in law adverse to the trust, as alleged, but subject and in

subordination thereto, was a necessary party and should have been arranged or aligned on the side of Robinson, as co complainant, and that the minority wing of the bondholders, at least, if not all the holders of said bonds, should have been made parties to said original suit, see:

Old Colony Trust Co. *vs.* Atlanta Ry. Co., 100 Fed., 798;

Boston, etc., Co. *vs.* Racine, 97 Fed., 817;

Huff *vs.* Williams, 62 Fed., 4;

Pittsburgh, etc., R. R. Co. *vs.* B. & O. R. R. Co., 61 Fed., 705;

Cilley *vs.* Patten, 62 Fed., 498.

Barth *vs.* Coler, 60 Fed., 466;

Perin *vs.* McGibben, 53 Fed., 86;

Mangels *vs.* Donau Brewing Co., 53 Fed., 513;

First Nat'l Bank of Chattanooga *vs.* Radford Trust Co., 80 Fed., 569;

Tug River Coal & Salt Co. *vs.* Brigel, 67 Fed., 625;

Consolidated Water Co. *vs.* Babcock, 76 Fed., 243;

Board of Trustees of Oberlin College *vs.* Blair, 70 Fed., 414.

V.

This Alabama case proposes to show that the entire premises, including the islands, and especially the little island on which the end of one building rests, are in Alabama.

The very geography to which counsel for plaintiff appeals shows that the other islands are separable. The decree shows it.

Indivisibility is not decreed as to *selling separately for all the bonds*, but only as to selling separate for some and leaving security for the rest. (Transcript, p—.)

Decree of May 30, 1895.

But the sale of the Alabama property was void.

Railroad Co. *v.* Koontz, 104 F. R., 5, 10.

A very thorough illustration of the proper course to be pursued, where property is in two States, will be found in the case of Wilmer *vs.* Atlanta & Richmond Air Line Railway Company. In that case the existence of the two companies of different States was recognized, and the two companies appeared and were made parties. Furthermore, in regard to the property outside of the State, the Court expressly say:

"We are not asked to foreclose the mortgage. We are not asked to confer on the Trustees any power they do not already possess, but simply to tell them what are their powers under their deed."

The Court also say: "The complainants may be required to file ancillary bills in other States," and the decree was that the Trustees were directed to sell the road at Atlanta, Georgia.

Wilmer *vs.* Atlanta & Richmond Air Line Railway Co., 2 Woods, 447, 455, 456 and 457.

In all railroad foreclosures recently had in the jurisdiction of the Circuit Court of the United States, for the Northern

District of Georgia, ancillary bills were filed in every State through which the roads ran; decrees were taken on each of these ancillary bills, and the mortgagor railroad companies were required to execute deeds, as well as the Master Commissioner, and the purchaser was given the right to demand a deed from the trustee foreclosing the mortgage.

This was true in the Central Railroad foreclosure, Richmond & Danville foreclosure, Georgia Pacific foreclosure, Savannah & Western foreclosure, Marietta & North Georgia foreclosure, and Chattanooga, Rome & Columbus foreclosure, and in the case of the Eagle and Phenix Manufacturing Company foreclosure.

In this connection, respecting the jurisdiction of the Circuit Court to convey lands in another State, the Circuit Court of Appeals, Fifth Circuit, in the case of Guarantee Trust & Safe Deposit Co. *vs.* Delta & Pine Land Co., 104 Fed., p. 5 (May 30, 1900), held as follows:

"While a Federal Court of Equity may compel a conveyance of lands in another State by a decree *in personam*, against a party who holds the title, *it has no jurisdiction to itself to transfer the title to such lands by a sale and conveyance made through the master or commissioner.*"

* * * * * * *

In the opinion, it is said:

"A writ of assistance, issued by the court in Tennessee to put the purchaser, at the sale made by the master, in pos-

session of the property, *would be wholly inoperative, because such process could have no extra-territorial effect.*"

Toland *vs.* Sprague, 12 Pet., 300; 9 L. W., 1093.

Picquit *vs.* Swan, 5 Mason, 40; Fed. Cases, No. 11, 134.

Ex parte Graham, 3 Wash. C. C., 456; Fed. Cases, No. 688.

Walker *vs.* Lea, C. C., 47; Fed. Cases, No. 645.

See also—

Pennoyer *vs.* Neff, 95 U. S., 714; L. W., 565.

Alex. C. King

KING & SPALDING,

Of Counsel for the Petitioners.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Docket No.

Ex parte THE HUGULEY MANUFACTURING COMPANY, AND THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, PETITIONERS.

BRIEF FOR PETITIONERS.

JOHN M. CHILTON,
Of Counsel.

PRESS OF BYRON S. ADAMS.

IN THE SUPREME COURT OF THE UNITED STATES.

EX PARTE THE HUGULEY MANUFACTURING COMPANY,

AND

THE ALABAMA & GEORGIA MANUFACTURING COMPANY.

BRIEF OF JOHN M. CHILTON, FOR PETITIONERS.

FACTS.

The Alabama and Georgia Manufacturing Company was first incorporated by special act of the legislature of the State of Alabama, and *subsequently* in the State of Georgia by special act. Neither act refers to the other, nor was there any corporate action by which the two corporations were consolidated. There was but one board of directors, however, and but one issue of corporate stock.

In 1884 a mortgage was executed by "The Alabama and Georgia Manufacturing Company," in and by which, without disclosing whether it was the corporate act of one or the other, or both said corporations, certain lands and a manufacturing plant for the manufacture of cotton were conveyed to J. J. Robinson, W. C. Yancey and W. T. Huguley, as trustees, to secure an issue of $65,000.00 of bonds.

This mortgage recites that a part of the property, consisting of certain isolated and detached islands as plainly described, were situated in the State of Georgia, while it then goes on to recite:

> "Also, a tract or parcel of land, lying on the *west* side of the Chattahoochee river, *opposite* the above-described islands, bounded on the *east* by said river, beginning at a point on the *west* bank of said river, nearly *opposite* the center of the seven acre island * * * containing sixty-five and 23/100 (65.23) acres, more or less, *lying and being in Chambers County, State of Alabama*, and being a part of section, etc., * * * *including all tenements and improvements, including the Cotton Mill and machinery therein or thereto belonging*, and all water privileges and riparian rights now or hereafter owned or enjoyed by said Alabama and Georgia Manufacturing Company."

From the face of this description in the mortgage, therefore, it would seem that barring the few islands named, this entire Cotton Mill plant, lands, Factory village, tenements, etc., etc., are situated *wholly* within the State of **Alabama**.

It likewise is shown, on the face of the record, that these islands, lying "*opposite*" and on the *other* side of the river, are entirely divorced and separated from *all* the remainder of the said lands and Cotton Mill plant in Alabama, and consequently that portion of said property *claimed* to be in Georgia, on the one hand, and all the remainder of the property so stated to be in Alabama, are, as matter of fact, plainly "*divisible*" or isolated, the one from the other.

Robinson, one of the trustees, filed his bill—or rather, permitted the use of his name in the suit instituted by cer-

tain bondholders—in the Circuit Court of the United States, for the Northern District of Georgia, praying a foreclosure of the mortgage.

It was alleged that the complainant was a citizen of the State of Alabama, and that the Alabama and Georgia Manufacturing Company was a corporation of *Georgia*.

It was further averred that the mortgaged property had once been sold under proceedings had in the State Court of Georgia, and that certain persons, who afterwards formed a corporation under the name of "The Huguley Manufacturing Company," became the purchasers. This sale, it was alleged, was subject to the mortgage sought to be foreclosed. Said last-named corporation was also made defendant as a corporation chartered under the laws of *Georgia*.

It was averred that of the two other trustees, Yancey had died, and Huguley was interested in the Huguley Manufacturing Company, and was therefore interested adversely to his trust. Huguley, who was alleged to be a citizen of Georgia, was also joined as defendant.

The citizenship of the holders and owners of the bonds was not stated or otherwise made to appear.

At the time of filing the bill for foreclosure, the bonds had fourteen years in which to run, but it was claimed they had matured by a failure to pay an instalment of interest—such failure alleged as continuing for the time specified in the mortgage, and after demand made for payment.

The interest had been remitted from St. Louis, where the Huguley Manufacturing Company did business, in time to have reached Atlanta by due course of mail, but the Atlanta National Bank, to which the remittance was sent, insisted it

reached it one day too late. By the terms of the bonds, the interest was payable "at the office of the Company, in West Point, Georgia," but while the property was in the hands of the Receiver, under the proceedings in the State court, the Receiver, it was testified, who was charged with the duty of keeping down the interest, and had in hand ample funds with which to pay, had paid it in Atlanta through this bank, the bondholders having acquiesced in this as a substitute place of payment.

The holders of $20,000.00 of the bonds duly presented their coupons at the proper time and place and to the proper agents and accepted their interest, thus waiving default. Dating from the 1st of January, 1891 (the *first* being a legal holiday and the banks being closed), tender of the interest was proffered to all the bondholders, both through the columns of the *Atlanta Constitution* and through personal agents and attorneys of the Huguley Manufacturing Company, but the interest coupons to the $45,000.00 of bonds named was declined.

No mention of the waiver of default as to the $20,000 00 of bonds owned by the minority interest was made in the bill, however, and it was sought to foreclose for *all* the bonds.

On the hearing, the Circuit Court of the United States, for the Northern District of Georgia, without a reference to a master, decreed a foreclosure for the entire principal of bonds and interest thereon.

From this decree an appeal was taken, and the decree was reversed, and the sale annulled and set aside, and an accounting for rents and profits, was ordered by the Circuit Court of Appeals, for the Fifth Circuit, for the error in

foreclosing for *all* of the bonds when some had waived the default.

Thereupon, the defendants to the bill filed in the Circuit Court their petition praying that restitution of the property be made to the Huguley Manufacturing Company, from whose possession it had been taken under the sale, and also praying an accounting for the rents and profits, etc.

The Court decreed it was entitled to both, but required as a condition precedent to relief in either aspect, that the Huguley Manufacturing Company refund to the purchasing bondholders, or to parties holding under them, some ten thousand dollars ($10,000.00), which it was claimed they had paid "into court" under the decree on their purchase, and which had been expended in part, in paying the costs of the proceeding under the decree which had been reversed, which had been awarded *in favor of* the Huguley Manufacturing Company ($1,002.50), including fees of complainant's solicitors ($2,600.00), the taxation of which the Circuit Court had already held could not be made against the Huguley Company, and fee awarded Robinson, Trustee ($500.00), and the remainder of which ($5,897.50) had been expended in a dividend paid upon certain bonds the holders of which had declined to join in the purchase—a transaction purely personal between the owners of the bonds and the parties advancing the money, and who became subrogated to the equity represented by said dividend. These respective sums made up the $10,000.00, the prepayment of which as a condition precedent to regaining possession of its property and being allowed to proceed with the accounting, the Circuit Court imposed upon the Huguley Manufacturing Company.

The defendants again appealed, and assigned for error amongst other things, so much of this decree as required the prepayment of said sum as a condition precedent.

The Circuit Court of Appeals affirmed the court below, but yet declared the defendants were entitled to an accounting for the rents, and profits, affixing no condition to the right.

Although the decree was thus affirmed, the Circuit Court construed the opinion and mandate of the Court of Appeals as *dispensing* with the conditions it had imposed, and accordingly made a decree directing an accounting *without prepayment.*

It is unnecessary to follow the proceedings on the accounting, since no question arises upon them in this application.

It is sufficient to say that, against the protest of the Huguley Manufacturing Company, and in denial of its petition praying a postponement until the rents and profits could be ascertained, a second sale was ordered to be held on the 6th day of May, 1896.

While the Circuit Court declined to grant this petition for postponement it determined that, while the sale should proceed, the interests of the Huguley Manufacturing Company, as intervener, should be protected, and to this end, passed a decretal order that whatever sum should ultimately be awarded under the reference then pending *should "remain a lien upon said property in favor of the Huguley Manufacturing Company as against the purchasers at said sale or any persons holding under them. And the Court retains and reserves the right to seize and order a sale of said property for*

the purpose of satisfying any such balance so found to be due as hereinbefore set out, and the title shall be made by said commissioner to the purchaser subject to this provision."

(See last Printed Record, on appeal, from N. O., p. 25.)

While the account was being taken, and before the coming in of the Master's report, a second sale was made on May 6, 1896. At this sale, the property was knocked down to one L. Lanier "*as agent and trustee for the mortgage bondholders*" and at the same bid as before. This sale or bid was reported to the court by the commissioner, expressly defining the capacity or relation of the bidder as stated, and the sale was ordered to stand confirmed when the purchasers—*the mortgage bondholders*—should comply with its terms by paying their bid. Subsequently, a decree over for the sum remaining unpaid on the bonded indebtedness, after crediting the sum bid, as if it had been paid, was prayed and granted against the Alabama and Georgia Manufacturing Company. This assumed, of course, there had been a *compliance with the terms of sale*, and further assumed that the principal and interest of the *entire* mortgage debt was to be treated as due and subject to foreclosure, and that *all* the bonds were available in the bid, whereas the right of foreclosure had been expressly limited to the $45,000.00 of complaining bonds, with interest.

But, two years and five months *afterwards*, it appeared *there had been no compliance.*

Lanier filed a petition, in which he stated he had not been able to control the bonds, and prayed further time in which

to pay for the property. He further prayed that the lien upon said property which had been vested in the Huguley Manufacturing Company, as intervener, for whatever sum of rents and profits, wastes, damages and conversions, etc., they might establish thereafter, be lifted and dissolved, and that upon compliance the property should be conveyed to *him, individually,* or to such persons as *he* might designate—instead of to the *purchasing bondholders,* in whose name he had bidden in the capacity of "*trustee,*" although as trustee he could not legally take the title individually.

The defendants resisted this, but insisted that if granted the purchaser should, at all events, be made to account for the rents and profits which had accrued during the period of non-compliance with the terms of sale—over six years having elapsed since the first sale of September 6, 1892, and nearly three years having elapsed since the last attempted sale of May 6, 1896, during which periods the Huguley Manufacturing Company, intervener, had been deprived of possession and rents and profits adjudged in its favor by the mandate of the Circuit Court of Appeals on or about the 30th day of May, 1893.

On the 15th day of October, 1898, two years, five months and nine days after the bid, the Circuit Court granted said Lanier's petition, gave him additional time—forty days—within which to raise the sum bid or purchase money, lifting and dissolving the preferred lien vested in the Huguley Manufacturing Company expressly to secure its recovery for the rents and profits, etc., awarded it nearly six years before, and leaving the property unencumbered and free of said lien, and further directed that after

Lanier should then succeed in raising the purchase money and should be in position to make a payment in *cash* in lieu of the bonds committed to the bid, then the deed should be so executed as to relate back to the time of the bid of May 6, 1896, the purchaser being charged with interest in the meantime, instead of being required to come to an accounting for the rents and profits accrued during all these years. Lastly, the Circuit Court ordered that whatever claim or judgment might be awarded in favor of the Huguley Manufacturing Company under the issues pending on appeal to the United States Circuit Court of Appeals, for the Fifth Circuit should be transferred from the property to the fund to be paid into Court by said Lanier under said amended decree *changing the terms and changing the parties as aforesaid.*

Thus it will be seen the Court assumed arbitrarily to alter a decree not only after the term at which it was rendered, when a Court has no power to do so, but even after the lapse of six years. And besides, it set aside the principle of law that a trustee cannot be a purchaser individually at his own sale or on a foreclosure at his instance as trustee.

See last printed Record on Appeal, from N. O., pp. 67–76.

From the rulings on these and other matters, an appeal was accordingly again taken to the Circuit Court of Appeals, and from the judgment of affirmance in that court, an appeal has been taken to this Court, where the cause is now under submission under a petition for *certiorari* to perfect the record.

On the 2d day of May, 1901, the Alabama and Georgia

Manufacturing Company and the Huguley Manufacturing Company filed their bill in the Chancery Court, for the First District of the Northeastern Division of the State of Alabama, for redemption of the property and an accounting of the rents and profits earned or that should have been earned, and all wastes, damages and conversions covering the nine years of the illegal tenure of the defendants, charged in the bill as then amounting to $528,000.00, with interest.

It was alleged that each corporation had been duly incorporated and organized under the laws of the State of Alabama, the first by legislative enactment and the second under the general laws of that State.

The execution of the said mortgage was alleged, and a redemption was prayed, as stated.

To this bill, the West Point Manufacturing Company, a corporation under the laws of Alabama only, and the Galeton Cotton Mills, a corporation under the laws of Alabama only, and the Riverdale Cotton Mills, also alleged to be a corporation under the laws of Alabama, and J. J. Robinson, as trustee, a citizen of Alabama, and W. T. Huguley, a trustee, a citizen of New York, were made defendants.

Each of these defendant corporations appeared by solicitors in the cause, and demurred to the bill; and at a regular term of the court held on the 10th day of June, 1901, the cause coming on to be heard, was submitted for decree on the demurrers. J. J. Robinson, as such trustee, entered no appearance or answer. W. T. Huguley, both for himself and as trustee of the first mortgage bondholders of the Alabama and Georgia Manufacturing Company, duly

accepted service of the bill, and waived service, but made no answer thereto.

On the same day, but *afterwards*, a bill was filed in the Circuit Court of the United States, for the Northern District of Georgia, in which the Riverdale Cotton Mills, claiming to be a corporation under the laws of *Georgia*, appeared as *sole* complainant, alleging that the complainant corporations in the Alabama Chancery suit had been defendants to the foreclosure proceedings in the Circuit Court, and that the proceedings in Alabama had been instituted for the purpose of harassing and vexing the bondholders and those claiming under them under said original foreclosure proceedings, etc. It was prayed by the Riverdale Cotton Mills, of Georgia, that the Circuit Court of the United States for the Northern District of Georgia, would restrain the further prosecution of the suit filed in the Chancery Court of the State of Alabama, pending a hearing, and would finally, on such after hearing, enjoin its prosecution perpetually.

Besides the two complainant corporations, namely, the Alabama and Georgia Manufacturing Company, of Alabama, and the Huguley Manufacturing Company, of Alabama, the solicitors of the latter were likewise made parties defendant, the latter being served within the State of Alabama, but expressly reserving exception to the jurisdiction of said Circuit Court in the premises.

The Circuit Court made a preliminary restraining order and a further order requiring the complainants in the Alabama suit, the two Alabama corporations aforesaid, and their solicitors, to show cause on a named date why the injunction prayed should not be made permanent.

The defendants appeared and objected to the jurisdiction of the Circuit Court of the United States, for the Northern District of Georgia, by way of demurrer to the bill, on the 20th day of June, 1901.

The court took the matter under advisement after hearing argument, and so held it until the 8th day of October, 1901, when it made a decretal order reciting, in substance, that the foreclosure suit was pending on appeal in this Court, and postponing a further hearing or determination of the cause until this Court should determine the pending cause. In the meantime the injunction was continued in force without bond or other security being required from the said Riverdale Cotton Mills of Georgia.

It is to prohibit the exercise of jurisdiction on the part of said Circuit Court of the United States, for the Northern District of Georgia, in this so-called "ancillary" suit, that an application is now made to this Honorable Court. In the alternative, a mandamus to require a decision of the cause is also prayed.

Propositions of Law.

I.

While it was originally doubted (*Ex parte* Christey, 3 How., 198) whether this Court possessed power to grant writs of prohibition except in admiralty proceedings, it is now settled that it has that power.

Smith *vs.* Whitney, 116 U. S., 167, 173, and cases cited;

Ex parte Rice, ("*In re* Rice, petitioner,") 155 U. S., 396, 402.

Without tracing the history of the writ at common law, and applying its analogies, it is evident that the power to compel inferior courts to observe the limitations to the exercise of jurisdiction imposed by law must reside somewhere. And where is it lodged if not in the court of last resort, having the power to review their proceedings on appeal?

II.

This Court not only possesses the power, but the right to the writ cannot now be said to rest entirely in discretion, where it clearly appears there has been an unlawful exercise of authority by the lower Court, and the party applying has duly objected.

Smith *vs.* Whitney, 116 U. S., 167, 173;
In re Rice, Petitioner, 155 U. S., 396, 402;
In re Cooper, 143 U. S., 473, 495;
In re Fassett, 142 U. S., 479, 486;
In re Morrison, 147 U. S., 14, 33, 36;
Ex parte Bradley, 7 Wall., 377;
High's Extraordinary Legal Remedies, p. 616, Sec. 560.

In *Ex parte* Bradley, 7 Wall., 377, which was a case wherein the jurisdiction of the court was challenged—not one of admiralty but of disbarment, contempt, etc., of an attorney, Mr. Justice Nelson said:

> "The ground of our decision upon this branch of the case is, that the court below had no jurisdiction to disbar the relator for a contempt committed before another court. The contrary must be maintained before this order can be upheld and the writ of mandamus denied. *No amount of judicial discretion of a court can supply a defect*

or want of jurisdiction in the case. The subject-matter is not before it; the proceeding is *coram non judice and void.* Now, this want of jurisdiction of the inferior court in a summary proceeding to remove an officer of court, to disbar an attorney or counsellor, is one of the specific cases in which this writ is the appropriate remedy. We have already seen from the definition and office of it that it is issued to the inferior courts "to enforce the due exercise of those judicial or ministerial powers with which the crown or legislature have invested them; and this not only by restraining their excesses, but also by quickening their negligence and obviating their denial of justice." (Blackstone Com. III.)

The same principle is also found stated with more fullness in Bacon's Abridg., title "Mandamus," "to restrain them (inferior courts) within their bounds, and compel them to execute their jurisdiction, whether such jurisdiction arises by charter, etc., being *in subsidium justitiæ.*"

The same principle is also stated by Chief Justice Marshall in *Ex parte* Burr. "There is, then," he observes, "no irregularity in the mode of proceeding which would justify the interpretation of this court. It could only interpose on the ground that the Circuit Court had clearly exceeded its powers, or had decided erroneously on the testimony." The case of Burr was one of malpractice and stirring up litigation, etc. * * * Cases are also found in many of the courts of the States. Among the more recent are three cases in California, in New York, in Pennsylvania, Virginia, and Alabama. In several of the cases the remedy failed, as in *Ex parte* Burr, Secombe, and Tillinghast, the court having

held, in the cases, that the questions involved were of judicial discretion. But the proceeding is admitted to be the recognized remedy when the case is outside of the exercise of this discretion, and is one of irregularity, or against law, or of flagrant injustice, or without jurisdiction," etc.

In re Alix, Petitioner, 166 U. S., 136, Mr. Chief Justice Fuller held as follows :

> "The *settled rules* in reference to the writ of prohibition were thus laid down in *In re* Rice, Petitioner, 155 U. S., 396, 402 :
>
> "Where it appears that the court whose action is sought to be prohibited had clearly no jurisdiction of the cause originally, or of some collateral matter arising therein, a party who has objected to the jurisdiction at the outset and has no other remedy is entitled to a writ of prohibition as a matter of right," etc.

And the case referred to, viz., of "*In re* Rice, Petitioner," likewise was not one of admiralty, but of a receivership, foreclosure of bonds, and other matters growing out of the liquidation of the debts of the Philadelphia & Reading Railroad and its Coal and Iron companies.

III.

The writ will not be denied merely because it may appear the lower court "acted upon the conviction that it possessed power or authority in the matter," for jurisdiction cannot be conferred by *good intentions*. This Court may, however, in such cases, cause its opinion to be made known, with leave to the parties to apply further, should the lower court not conform to it.

Bronson *vs.* La Crosse & Ill. R. R. Co., 1 Wall., 405.

IV.

The wrongful assumption of power need not have relation to the entire cause. The Court having jurisdiction of the cause, may still exceed its power in making some order or decree in its progress.

In *Ex parte* Morgan Smith, 23 Ala., 94, the Court, having jurisdiction of the principal cause, made an order of reference to the register to designate and appoint some suitable person to be receiver. The power to appoint receivers being confided by statute to the Court exclusively, a prohibition was awarded.

In *Ex parte* Roundtree, 51 Ala., 51, Chief-Justice Brickell held:

"A writ of prohibition is a preventive, rather than a corrective remedy. Its purpose is to prevent the usurpation or excess of jurisdiction by judicial tribunals, and to keep each court within the limits to which the law confines it. Though it has been most often addressed to recognized tribunals, having a defined jurisdiction, which they were exceeding, or to prevent them from encroaching on the jurisdiction of other tribunals, we do not doubt that, in the absence of any other remedy, it lies to prevent unauthorized individuals from usurping judicial power."

(Citing authorities.)

V.

Where no jurisdictional fact, such as diverse citizenship, or that the suit relates to grants from different States, etc., is relied on, but its exercise of jurisdiction is invoked solely

on the ground that the proceedings are ancillary to proceedings already had in the same court, it must appear as a jurisdictional necessity, that the bill is well filed as an ancillary bill. If it is wanting in any requirement essential to the maintenance of such a bill, the court is without jurisdiction.

Foster's Fed. Prac., sec. 21.

VI.

There are six essentials to every well-filed bill of this character, where it is sought to enjoin subsequent proceedings on the ground that the parties are concluded by previous proceedings:

1st. The court must have, or have had, jurisdiction of the original proceeding in aid of which the subsequent suit is brought.

2nd. It must appear that the parties to the suit sought to be enjoined were parties or privy to the first decree.

3rd. That they sustain the same relation to the last suit as they did to the first. That is to say, parties who were defendants to the first suit cannot be restrained when they occupy the relation of plaintiffs in the second.

4th. The issues presented in the second suit must be the same which are, or might have been, made in the first.

5th. The ancillary suit must be brought by some one who is also a party to the suit sought to be enjoined, or sustain a relation of privity with some one who is a party.

6th. It must appear that the defendants to the suit sought to be enjoined have not submitted to the jurisdiction in which such suit is pending.

FIRST.

Did the Circuit Court have jurisdiction of the foreclosure suit? This question is discussed at length in the briefs of Hon. John T. Morgan, Morgan, Welles & Chilton, and King & Spalding, associate counsel, filed with this brief, in the case of The Huguley Manufacturing Company and The Alabama & Georgia Manufacturing Company *vs.* The West Point Manufacturing Company, *et al.*, in connection with which, we are informed, it is proposed to submit this proceeding, by leave of this Honorable Court. We therefore beg leave to refer to those arguments.

SECOND.

Neither of the complainants to the Alabama suit were parties to the foreclosure suit.

That corporations of the same names, but chartered by different States, are distinct and separate legal entities, is a proposition to sustain which we can cite the foreclosure in the original cause. In that cause, Robinson, Trustee, a citizen of Alabama, filed his bill against the Alabama and Georgia Manufacturing Company, a citizen of the State of *Georgia*. Why did he not allege it was *also* incorporated by the legislature of the State of *Alabama*, and *first* so incorporated? If he had alleged it, and had made it a party in that relation, it would undoubtedly have ousted the jurisdiction of the Circuit Court of the United States, for the Northern District of Georgia.

Again, it appears on the face of the record that the Huguley Manufacturing Company was also first and originally likewise incorporated and also fully *organized* in the State

of Alabama, and that to *it*, as such original *Alabama* corporation, the firm of W. H. Huguley & Co., which had acquired the property at a sale by receiver of the State court, had duly and regularly assigned and conveyed all the real estate (65 acres of land) upon which the Cotton Mill plant and village, tenements, warehouses, etc., etc., are located and operated, as their subscription to the capital stock of The Huguley Manufacturing Company of **Alabama**

Furthermore, no decree was ever entered against the Huguley Manufacturing Company, whether as a corporation of Alabama or of Georgia, nor was there ever any decree against the Alabama and Georgia Manufacturing Company of Alabama.

As pointed out in the brief of King & Spalding, associate counsel, filed herewith, there could have been no effective sale, conveyance or confirmation, under any view, against the Alabama and Georgia Manufacturing Company of *Georgia*. It had expired before the same occurred. Suit against *it* fell, on such death. Subsequent action was therefore a nullity.

> West End & Atlanta Street Railway Co. *vs.* Atlanta Street Railroad Co., 49 Ga., 151, 153;
> Logan *vs.* Western & Atlantic Ry. Co., 87 Ga., 534;
> Pendleton *vs.* Russell, 144 U. S., 640, 644.

But the proposition that such corporations are, for the purposes of jurisdiction, separate entities, is so well settled that we need cite only a few of the many cases in point, without further comment:

> Ohio & Miss. R. R. Co. *vs.* Wheeler, 1 Black, 286;
> Railway Co. *vs.* Whitton, 13 Wall., 270;

Nashua & Lowell R. R. Corp. *vs.* Boston & Lowell R. R. Corp., 136 U. S., 356;
Muller *vs.* Dows, 94 U. S., 444.

If the two corporations could not have been originally joined in the foreclosure suit, it is clear they cannot be concluded by ancillary bill. To hold otherwise would lead to a unique exception to the general rule, that that which can not be done directly may not be done indirectly. It would only be necessary that a circuit court should secure jurisdiction of one proper party in any original proceeding, and afterwards conclude all others, without reference to their citizenship, by ancillary proceedings.

THIRD.

It is held by respectable authorities that before parties to a subsequent proceeding can be enjoined as concluded by the earlier clause, they must sustain the same relation to the enjoined proceedings that they sustained to the original cause.

It is assumed that a defendant to a cause can pray no affirmative relief in that proceeding. When, therefore, he becomes a complainant in another cause, it is assumed the issues must be necessarily different from those which were or could have been raised in the original proceedings.

It follows that even if the parties in the Alabama suit and in the foreclosure suit were the same, their position is reversed, and the issues cannot, therefore, be the same.

Taylor *vs.* The Royal Saxon, 1 Wall., Jr., C. C., 311;
"Certain Logs of Mahogany", 2 Sumner, 589.

But, aside from the legal presumption following the changed position of the parties, and, as matter of fact, the issues in the two suits were and are not the same.

The issues tendered in the enjoined suit relate to the right to redeem the property, and involve a determination of the question of boundary between the States of Alabama and Georgia—an issue not presented in the foreclosure suit.

In determining whether the issues were the same, and for all purposes of jurisdiction of the ancillary suit, the averments of the bill in the suit sought to be enjoined must be taken as true.

It will not do to allege in the ancillary bill that if the facts were truly stated in the second suit, the same issues would appear to be involved. Otherwise, the court would enjoin, not the case as it is, but the case as the complainant in the ancillary cause avers the facts really to be.

Here, the ancillary bill, in its more important aspects, denies the statements of fact contained in the Alabama bill, as for instance, that all the lands are situated in the State of Alabama.

If the facts are not as alleged in the Alabama bill, it will be defeated on hearing because of a variance or for want of evidence to sustain the averment, if it is untrue.

But instead of taking issue, or rather of joining with the other five defendants to the Alabama bill who have there appeared and joined issue, the complainant—an utter stranger to the Alabama suit—seeks to make his defense by ancillary bill.

FOURTH.

The ancillary suit is brought by the Riverdale Cotton Mills—as a corporation of *Georgia*—a corporation that was not a party to the Alabama suit, and which, so far as appears, sustains no such relation to the parties to that suit as that a decree therein would bind it.

FIFTH.

But if any such privity exists between the complainant in the ancillary suit and the parties to the Alabama suit as would enable the Riverdale Cotton Mills to maintain the bill, it must result that it would be affected by all estoppels that affect the real defendants to the Alabama suit. It appears that the defendants to that suit, or at least the three defendant corporations, the West Point Manufacturing Company, the Galeton Cotton Mills, and the "Riverdale Cotton Mills," all appeared by solicitors and filed demurrers to the bill, some of which go to the merits of the controversy. If they are permitted after this to invoke another jurisdiction, they violate the very principle they invoke when they claim they have a right to intervene to prevent a multiplicity of suits.

If any one of the foregoing essentials to a well filed ancillary bill is wanting, it affects the *jurisdiction* of the Circuit Court.

While a bill may contain equity when tested by general principles of equity jurisprudence, it cannot be maintained as an ancillary bill unless it also discloses the particular elements that give the court jurisdiction. Every averment,

which is necessary to show that the first suit was conclusive against the parties to the second, is jurisdictional.

SIXTH.

We submit that even if the Circuit Court was not without jurisdiction of the main cause made by the ancillary bill, it exceeded its powers in postponing a determination of the question of jurisdiction until this Court should determine the other cause, involving, as it does, different parties and wholly different subject-matter.

If it can exercise the power which it has here assumed to exercise, it may postpone the hearing and thus delay an appeal until any *other* event, having no proper relation to the case, shall occur.

If this Court reverses the pending cause, it might have the effect to establish the right of redemption. But how can the existence or not of the right confer jurisdiction upon the Circuit Court or deprive it of jurisdiction? The fate of the appeal in the pending cause might exert a very important effect upon the Alabama suit, but it is not seen what relation it could have to the ancillary proceedings.

We therefore submit that the Circuit Court had no power to postpone the case to abide the decision of this Court on the appeal cause.

If this be true, it would follow, we submit, that prohibition would be the proper remedy to compel the judge of the Circuit Court to vacate the order postponing the cause.

Ex parte Morgan Smith, 23 Ala., 94.

A recent decision of the Supreme Court of Alabama

(May 9, 1901), *Ex parte* Campbell *et al.*, 30 Southern Reporter, 521–3, is in point.

The head note recites as follows:

> "Where a bill praying an injunction is filed in the chancery court, and a temporary injunction is issued, upon the respondent making a motion to dismiss the bill for want of equity, and another motion to dissolve the injunction because the bill is wanting in equity, and the case is properly submitted to the Chancellor on these motions, the Chancellor is then without discretion in the premises, but must pass upon the motions on which the cause is submitted, and upon his failure to do so can be compelled thereto by mandamus."

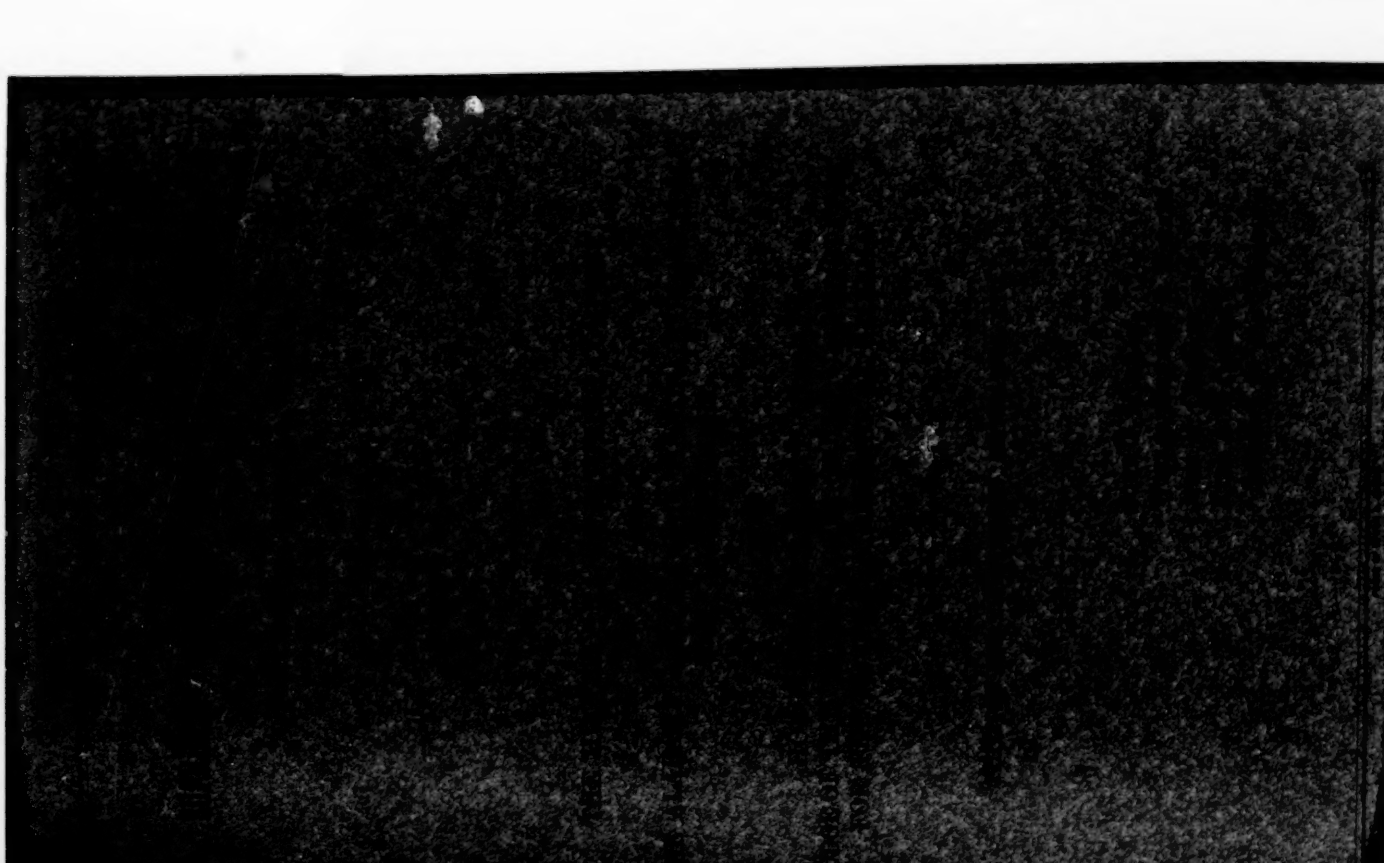
In the opinion, the Court held as follows:

> "It is well settled, that when a judicial officer refuses to hear and decide a case properly before him, and of which he has jurisdiction, mandamus lies to compel him to act, and render a judgment or decree in the cause, but not to correct errors, or direct what particular judgment or decree shall be rendered—not to control but compel judicial action."
>
> *Ex parte* Shaudies, 66 Ala., 134;
> *Ex parte* Woodruff, 123 Ala., 99; 26 South., 509;
> High, Extr. Rem., sec. 266.
>
> "If a Chancellor has the discretion to decline to decide a case of this character when properly submitted to him, he may exercise such discretion any number of times, to the very great prejudice of the rights, which the law secures to movant, to have his motions heard and determined. The law very wisely withholds any such discretion, but makes it the duty of the Chancellor to decide the question without unnecessary or unreasonable delay."

Therefore, if it is not a question of power but merely of legal *propriety*, we concede that, *in this aspect of the case, mandamus*, as distinguished from prohibition, would afford the proper remedy. And, in this aspect, we have, provisionally, prayed that a mandamus issue.

Respectfully submitted,

JOHN M. CHILTON,
Of Counsel for the Petitioners.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

DOCKET NO.

THE HUGULEY MANUFACTURING COMPANY,

AND

THE ALABAMA AND GEORGIA MANUFACTURING COMPANY, PETITIONERS,

versus

HONORABLE WILLIAM T. NEWMAN,
JUDGE OF THE CIRCUIT COURT OF THE UNITED STATES,
FOR THE NORTHERN DISTRICT OF GEORGIA.

PETITION FOR PROHIBITION, MANDAMUS, ETC.

JOHN T. MORGAN,
WELLES, BENNETT & WELLES,
JOHN M. CHILTON,
KING & SPALDING,
Solicitors for the Petitioners.

To the Honorable the Chief-Justice and Associate Justices of the Supreme Court of the United States.

Your petitioners, The Huguley Manufacturing Company, a corporation chartered and organized under the laws of the State of Alabama, and The Alabama and Georgia Manufacturing Company, a corporation chartered by Act No. 183, of the legislative acts of the State of Alabama, approved February 7, 1866, and duly organized and operated thereunder, respectfully state unto your Honors, as follows:

I.

That they are the complainants in a suit, brought in the Chancery Court of the First District of the Northeastern Division of Alabama, for the purpose of redeeming certain property—a Cotton Duck Manufacturing plant—from the West Point Manufacturing Company, the Galeton Cotton Mills, and the Riverdale Cotton Mills, each a corporation under the laws of the State of Alabama, and from J. J. Robinson, Trustee, a citizen of the State of Alabama, which said defendant corporations are holding said property as mortgagees-in-possession.

II.

Your petitioners further represent that they are not parties, and never have been made or served as parties to any litigation had or pending in the Circuit Court of the United States, for the Northern District of Georgia, but that, notwithstanding this fact, they were served in the State of Alabama with what purported to be process from the said Circuit Court of the United States, for the Northern District of Georgia, and compelled to appear before the said court in pretended "ancillary" proceedings, based upon a previous suit which was no longer pending and in which a decree had been rendered and fully executed, for the foreclosure of the mortgage under which redemption was sought in Alabama as to property lying wholly within the State of Alabama and from Alabama corporations.

III.

As will appear from the face of the record, the Circuit Court of the United States, for the Northern District of Georgia, had no juris-

diction over the original suit for foreclosure in Georgia, for the following reasons :

(*a*) That the property, sought to be foreclosed upon, was and is located wholly within the State of Alabama, and not within the jurisdiction of the said court.

(*b*) That The Alabama and Georgia Manufacturing Company, of the State of Alabama, the mortgagor corporation, was not made a party to the said suit in Georgia, and had said Alabama corporation been so joined as a party, it would have ousted the jurisdiction of the said Circuit Court of the United States, for the Northern District of Georgia.

(*c*) That W. T. Huguley, one of the trustees in the said mortgage, was not joined as plaintiff, as required by law, and had he been so joined, it would have ousted the jurisdiction of the said Circuit Court for the Northern District of Georgia.

(*d*) That a large number of the holders of the bonds, secured by the said mortgage sought to be foreclosed, representing in amount $20,000.00, exclusive of interest, protested against and were not participants in, the said foreclosure, and were not joined as parties, and had they been so joined, the jurisdiction of the Circuit Court of the United States, for the Northern District of Georgia, would have been ousted, the citizenship of said holders not being made to appear on the face of the record in said original bill for foreclosure.

(*e*) That, as to the remainder of the said bonds, to wit, $43,000.00 in amount, the citizenship of the holders of these was not made to appear, nor were they joined as parties in said original bill, but had they been so joined or had the citizenship of the respective holders been made to appear, as required by law, the jurisdiction of the Circuit Court of the United States, for the Northern District of Georgia, would have been ousted.

(*f*) That the charter of The Alabama and Georgia Manufacturing Company, of the State of *Georgia*, which said Georgia corporation alone was made party defendant to the said original suit for foreclosure *in rem*, expired by limitation during the progress of said suit, and in advance of the execution of the said decree of foreclosure, and was never revived.

(*g*) That, while charters, under the same names and titles, were granted to both The Alabama and Georgia Manufacturing Company and to The Huguley Manufacturing Company, its successor in interest, under the laws of Georgia, they were each *subsequent* in point of dates to the original charters issued to said named corporations which had previously been duly organized under the laws of Alabama, the incorporators of each being different persons, and additional restrictions as to franchises and powers granted being attached to the later Georgia charters.

(*h*) That, as between the respective corporations, as chartered and organized, first, under the laws of Alabama, and, then later, chartered in Georgia, whether under the name and title of "The Alabama and Georgia Manufacturing Company" or of "The Huguley Manufacturing Company," there was never any merger or consolidation, but each corporation as such remained throughout and still remains, a separate and distinct entity and corporate body, the one from the other.

(*i*) That, as to the Huguley Manufacturing Company, the owner of the equity of redemption of the property of The Alabama and Georgia Manufacturing Company, whether as a corporation of Alabama, or even of Georgia, no decree was ever entered against it, and neither was it allowed or given its day in court for the redemption of said property, in its capacity as such owner of the equity of redemption, as required by law.

(*j*) That, in the said original suit for foreclosure, the decree which was *in rem* was wholly and solely against The Alabama and Georgia Manufacturing Company of *Georgia*, and not otherwise. The charter of said Georgia corporation having expired prior to the execution of the decree, and it being an indispensable party, as to it all proceedings were void.

(*k*) That, under the incorporation and organization of The Huguley Manufacturing Company as a corporate entity under the laws of the State of Alabama, through the firm of W. H. Huguley & Company, the purchasers of the property of The Alabama and Georgia Manufacturing Company, acquired at a sale under the decree of the State court, the entire property, lands, etc., including all tenements and improvements, including the Cotton Mill and all

the machinery therein or thereto belonging, by said firm were duly and regularly conveyed and assigned to the said The Huguley Manufacturing Company of the State of *Alabama*, being quit-claimed in payment and return for their subscription to its 2,000 shares ($200,000.00) of capital stock issued.

(*l*) That, in this case, no acceptance of the charter granted in Georgia, either to The Alabama and Georgia Manufacturing Company or to The Huguley Manufacturing Company, and no organization thereunder, and no deed or deeds to the Georgia corporation of The Huguley Manufacturing Company, was ever made or shown, while there was such formal and regular acceptance and organization made and perfected on the part of The Huguley Manufacturing Company in conformity with the laws of its parent State of *Alabama*.

(*m*) Lastly, that, as corporations and entities under the laws of the State of Alabama, there was never any decree against either The Alabama and Georgia Manufacturing Company or The Huguley Manufacturing Company.

IV.

Petitioners aver, under the facts aforesaid, and upon the face of the record, that the jurisdiction assumed never attached in the Circuit Court of the United States, for the Northern District of Georgia, originally, and that whether it did so attach or not, the proceeding instituted to enjoin the progress of the cause pending in the Chancery Court of the State of Alabama was beyond the jurisdiction of said United States Circuit Court, for the Northern District of Georgia, as an original proceeding, being in violation of Section 720 of the Revised Statutes of the United States, and was in no sense an ancillary proceeding for the reason that the exercise of jurisdiction by the Circuit Court of the United States, for the Northern District of Georgia, over the subject-matter of the litigation originally instituted in it had ceased and ended, the decree of said Court for the sale of said property having been fully executed and the purchaser having taken possession thereof, and that the proceeding instituted by said Riverdale Cotton Mills was purely an original suit setting up the title acquired under the decree of the Circuit Court of the United States, and endeavoring, because it had

claimed to hold under such title, to enjoin a suit brought in the State Court.

Petitioners aver that, so far as the cause originally instituted in the Circuit Court of the United States to which the bill filed by the Riverdale Cotton Mills is claimed to be ancillary, is still pending, or is in existence, the same is pending in the Supreme Court of the United States, having been brought to said Court and now pending therein upon an appeal allowed from the judgment and decree of the Circuit Court of Appeals in said cause, which appeal is now pending undisposed of in this Honorable Court; that if the United States Courts have jurisdiction at all to enjoin the said proceeding instituted by petitioners in the Chancery Court of Alabama, and if such injunction would not be a violation of the Revised Statutes of the United States above cited, such application for injunction could only be entertained by a proceeding from this Honorable Court, and such proceeding could only be ancillary in respect to the cause as now pending in this Honorable Court. But your petitioners show that the said Circuit Court of the United States, for the Northern District of Georgia, has entertained jurisdiction of the bill filed by the Riverdale Cotton Mills, claimed to be a corporation under the laws of Georgia, which is not a party to any suit heretofore pending in the United States Circuit Court, for the Northern District of Georgia, nor a party to the appeal pending in this Honorable Court, nor a party to said bill filed by your petitioners in the Chancery Court of Alabama to enjoin the said bill, and that the said Circuit Court of the United States, for the Northern District of Georgia, has entertained jurisdiction thereof and granted a restraining order, enjoining the proceeding of said bill in the State Court of Alabama, pending the disposition of the appeal in this Honorable Court, and has reserved the question of whether it would further enjoin the same for decision after the disposition of said appeal.

Your petitioners allege that said exercise of jurisdiction of said Circuit Court of the United States, for the Northern District of Georgia, both in entertaining said bill and in granting said injunction, is without authority of law, and transcends the jurisdiction of said court, not only because of a want of jurisdiction of the original cause, as hereinbefore stated, but also because the Circuit Courts of the United States are denied jurisdiction to enjoin proceedings in State courts, and because whatever jurisdiction there may exist in the premises is in this Honorable Court and can be alone exercised by it.

Your petitioners represent that jurisdiction could not have attached in the so-called ancillary proceeding for the reason that none of the parties, who appeared or who were cited to appear in the original proceedings, in any way attempted to appear or interfere in the proceeding brought in the Chancery Court of the State of Alabama. The rights of the said parties attached *prior* to the proceedings in the Circuit Court of the United States, for the Northern District of Georgia, and no attempt having been made to so interfere, their rights could not have been affected by such proceedings.

Petitioners further show that ancillary jurisdiction could not have attached for the further reason that all parties defendant in the proceedings in the Chancery Court of Alabama had there appeared and filed their defences to that suit, and the case had been duly submitted on its merits, and a date set for a hearing by the Chancellor, without objection to the jurisdiction of the said State Court, *before* the institution of this so-called "ancillary" proceeding in Georgia.

Petitioners show that ancillary jurisdiction could not have attached for the further reasons that the original proceedings were out of court, the decree fully executed, the sale made, and a deed executed and delivered, leaving no original suit upon which any ancillary proceedings could be based.

Petitioners further show that, notwithstanding the Circuit Court of the United States, for the Northern District of Georgia, never acquired jurisdiction over the original suit for foreclosure, as shown, it nevertheless entertained a petition, filed by an utter *stranger* to both the original suit for foreclosure and a stranger to the bill filed in the State Court of Alabama, to restrain a suit to which the said petitioners were not parties, and in which not one of the five named defendants to the suit in the Chancery Court of Alabama joined.

Petitioners further represent that, upon a hearing in these injunction proceedings in the United States Circuit Court, for the Northern District of Georgia, that honorable court issued an interlocutory decree, which had the effect of preventing any review by a superior court of the unjurisdictional acts of the said court, by extending its injunction until another cause, between altogether different parties and involving a different subject-matter, should be determined by the Supreme Court of the United States.

Petitioners represent that said indefinite postponement of the determination of said jurisdictional questions have been decreed with-

out requiring any security or indemnity to your petitioners, thu enjoining them indefinitely, without ultimate redress and withou the right to appeal.

V.

Your petitioners attach hereto, and make a part hereof, a certifie copy and transcript of all the proceedings in the Chancery Court o the First District of the Northeastern Division of Alabama, and als a certified transcript of all the proceedings in the Circuit Court o the United States, for the Northern District of Georgia, relating t the said redemption and injunction proceedings in the respectiv courts, and also a printed certified copy of abstracts and extract from the records of all previous proceedings in this original cause which was certified up and used in the hearing before this Honor able Court under former petition for writ of *certiorari* to the Unite States Circuit Court of Appeals, Fifth Circuit, and the subject-matte of which was referred to and made part of the record in the tw more recent proceedings in the Alabama Chancery Court and in th Circuit Court of the United States, for the Northern District o Georgia.

While this petition is addressed and has reference more particu larly and primarily to the proceedings under the bill for injunction as filed by the Riverdale Cotton Mills, had in the Circuit Court o the United States, for the Northern District of Georgia, in the ar rangement for submission of the printed transcripts herewith follow ing, for sake of convenience and ready reference of this Honorabl Court, it has been deemed advisable to observe the regular chrono logical order of the two suits and the record thereunder, and to thi end the transcript from the Alabama Chancery Court is here mad to precede that from the Circuit Court of the United States, for th Northern District of Georgia, it being also noted that, for sake o precision and completeness, several exhibits attached or tendere appear in duplicate under the respective records.

VI.

Premises considered, your petitioners pray this Honorable Cour to issue its writ of probibition to restrain, and prevent, and prohibi the said Circuit Court of the United States, for the Northern Dis trict of Georgia, from taking any further steps or proceedings wit relation to the said so-called "ancillary" suit, or the said suit file

Owing to the delay in receiving the certified transcript from the Chancery Court of Alabama, and as the subject-matter thereunder is compassed by the subsequent proceedings had in the Circuit Court, and in order to avoid cumbering the record with a number of exhibits appearing in duplicate, the record as it stands is now printed, omitting the Alabama transcript herein referred to.

in the Chancery Court for the First District of the Northeastern Division of Alabama, or the suit now pending in the Supreme Court of the United States; and your petitioners ask that the mandate of this Honorable Court issue requiring the said Circuit Court of the United States for the Northern District of Georgia to dismiss said so-called ancillary proceeding in the said court; or to show cause why such mandate to dismiss said so-called "ancillary" proceedings should not be issued and enforced; and for such other and further relief as may be required.

JOHN T. MORGAN,
WELLES, BENNETT & WELLES,
JOHN M. CHILTON,
KING & SPALDING.

Affidavit of William T. Huguley.

I, William T. Huguley, both for myself in person, and as Trustee of the First Mortgage Bondholders of The Alabama and Georgia Manufacturing Company, and as a member of the firm of W. H. Huguley & Company, and as agent and attorney for The Huguley Manufacturing Company, and especially delegated to prosecute this suit, swear that the statements contained in the foregoing petition are all true.

Witness my hand, this the 1st day of November, 1901, at Washington, District of Columbia.

WILLIAM T. HUGULEY.

Subscribed and sworn to before me this 1st day of November, 1901.

L. M. FOX,
Notary Public.

[SEAL.]

In the Circuit Court of the United States for the Northern District of Georgia.

THE RIVERDALE COTTON MILLS, *Complainant,* *vs.* ALABAMA AND GEORGIA MFG. CO. ET AL., *Defendant,*	In Equity.

To the Judges of the Circuit Court of the United States for the Northern District of Georgia:

The Riverdale Cotton Mills which is a corporation organized under the laws of the state of Georgia, and has its principal place of business within, and is a citizen and resident of, the Northern District of Georgia, brings this, its dependent bill, ancillary to the proceedings hereinafter referred to, against the Alabama and Georgia Manufacturing Co., whose residences are hereinafter shown, and thereupon your orator complains and says:

I.

That the said The Alabama & Georgia Manufacturing Company, and the Huguley Manufacturing Company, are corporations, each created under and by the laws of the state of Georgia, and each also claiming, as will hereinafter appear by exhibit "B" hereto, to have been organized under the laws of the state of Alabama; but if it should appear that either of said corporations was ever organized under the laws of the state of Alabama, which your orator in nowise admits, then orator avers that neither of them ever had any place of business within the state of Alabama, and that the only officers, directors, or stockholders, they or either of them ever had are and were the officers, directors, and stockholders, which they respectively had and have as organized under the laws of the state of Georgia, and the only place of business they or either of them ever had was within the state of Georgia; that neither of said defendant corporations now has any property of which orator has any knowledge and that both of said defendant corporations are citizens and residents of the state of Georgia within said Northern District of Georgia; that as long as either of said defendant corporations had any property, said property was situated partly in Georgia and partly in Alabama, and was operated as one business from the office of each of said corporations at West Point, in said state of Georgia, and said defendant corporations owned no other property than the property which each of them

respectively owned as organized under the laws of the state of Georgia; that the said property of the said The Alabama & Georgia Manufacturing Company is fully described in the mortgage of which exhibit "A" attached hereto is a copy, and the said property of the said Huguley Manufacturing Company was an Equity of Redemption, acquired after the execution and delivery of said mortgage, in the same and identical property, as hereinafter appears.

II.

That heretofore, to-wit: on or about the 2nd day of January, 1884, the said The Alabama & Georgia Manufacturing Company at its said office in West Point, in the said state of Georgia, executed a mortgage upon all of its property situated in both of said states of Alabama and Georgia, on which property was a cotton factory, and which property as a whole constituted its manufacturing plant, and was indivisible, and was operated as one plant and is still indivisible, to J. J. Robinson, W. T. Huguley, hereinafter named, and W. C. Yancey, as trustees for the bond holders secured thereby; a copy of said mortgage is hereto attached as "Exhibit A" with leave to refer thereto as often as necessary. That subsequent to the execution of said mortgage, to-wit: in the year 1888, by certain proceedings had in the Superior Court of Troup County, in the State of Georgia, all of the property of the said The Alabama and Georgia Manufacturing Company situated in said states of Alabama and Georgia was sold subject to the mortgage, executed as aforesaid, to said Robinson, Huguley and Yancey, as trustees, and at the said sale certain persons became purchasers of said property, and subsequently, and prior to January 1, 1891, the said purchasers conveyed said property so purchased by them to said Huguley Manufacturing Company, in which last mentioned corporation the said W. T. Huguley was interested, and thereby the said W. T. Huguley became interested adversely to the interests of the bond holders secured by the said mortgage executed by the said The Alabama and Georgia Manufacturing Company, as aforesaid, to said Robinson, Huguley and Yancey, as trustees, and that prior to the 1st of January, 1891, the said W. C. Yancey died.

Your orator further shows that heretofore, to-wit: six months prior to the 1st day of January, 1891, default was made in the said mortgage, and on or about the 20th day of January, 1891, the said J. J. Robinson, as trustee thereunder, filed his bill of complaint in this Honorable Court, praying, among other things, for the foreclosure of said mortgage; that the defendants to the said bill filed by the said Robinson, trustee, were the said The Alabama and Georgia Manufacturing Company, Huguley Manufacturing Company, and W. T. Huguley; that each of the said defendants to the said bill was duly and regularly served with process issued out of this Honorable Court, and each of said defendants to said bill, except

said W. T. Huguley, appeared in said Court and defended the said bill, and a decree *pro confesso* was duly and regularly taken in said suit against the said W. T. Huguley, which said cause is number 360 on the Equity Docket of this Honorable Court.

III.

Orator further shows that the said bill of complaint filed by the said Robinson, as Trustee alleged, among other things, that a default had occurred under the terms of said mortgage, and that the said trustee had the right and was entitled to have the said mortgage foreclosed for the benefit of the bondholders secured thereby, and said bill described the lands and other property identically as described in the mortgage a copy of which is hereto attached as "Exhibit A." That in the answer to the said suit filed by the said Robinson as trustee in said Circuit Court of the United States for the Northern District of Georgia, filed by said Huguley Manufacturing Company, and by the Alabama and Georgia Manufacturing Company, said two corporations admitted the citizenship of said two corporations as being in the state of Georgia, as alleged in said bill of complaint, and admitted that said The Alabama and Georgia Manufacturing Company had executed some sort of a mortgage to said Robinson, Huguley and Yancey as Trustees, but called for proof of said mortgage. The said answers further admitted that the said The Alabama & Georgia Manufacturing Company had executed bonds secured by said mortgage, and mentioned and described in said bill, and admitted that the Alabama & Georgia Manufacturing Company's equity of redemption in the property conveyed in said mortgage had become the property of said Huguley Manufacturing Company, and admitted that said The Alabama and Georgia Manufacturing Company had ceased to carry on its manufacturing business, but denied that any default had occurred in said mortgage or in the requirements thereof; that the said Huguley Manufacturing Company in its said answer filed in said suit prayed said Circuit Court of the United States for the Northern District of Georgia to decree to said Huguley Manufacturing Company any surplus of the proceeds of the sale of said property over and above the amount necessary to pay the debt secured by said mortgage.

Orator further shows that in the said suit filed by the said J. J. Robinson as trustee in said Circuit Court of the United States for the Northern District of Georgia, testimony was taken, and the said cause was tried on its merits, and in the said cause a decree was rendered heretofore, to-wit: on or about the 30th day of May, 1892, decreeing, among other things, the foreclosure of said mortgage and ordering the lands and property described in said bill of complaint and in said mortgage to be sold for the satisfaction of said mortgage indebtedness, and pursuant to said order of sale the said property

of The Alabama and Georgia Manufacturing Company was sold to Lanier, Dallis and Kirby, representing the said bond holders, and by said Lanier, Dallis and Kirby was transferred and conveyed to the Galeton Cotton Mills, a corporation.

IV.

Orator further shows that from the said decree of the Circuit Court of the United States for the Northern District of Georgia, foreclosing the said mortgage and ordering the said property sold, the said The Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, appealed to the United States Circuit Court of Appeals for the Fifth Circuit; that upon said appeal the said decree of the Circuit Court of the United States for the Northern District of Georgia was reversed and annulled, and said cause was remanded to said Circuit Court of the United States for the Northern District of Georgia for further proceedings therein.

That afterwards, to wit: on or about the 10th day of June, 1893, the said Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company filed their petition in said suit filed as aforesaid by said Robinson as trustee, alleging, among other things, that the said Huguley Manufacturing Company was entitled to the rents and profits of said mortgaged property since the sale thereof above mentioned, and praying for an account of said rents and profits and a restitution of said property to said Huguley Manufacturing Company.

Your orator further shows that in the said suit filed as aforesaid in the said Circuit Court of the United States for the Northern District of Georgia, the said Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company were represented as solicitor by one J. M. Chilton. That the said petition filed in the said cause by the said Huguley Manufacturing Company resulted in the purchasers at said sale so held as aforesaid under said decree of said Circuit Court of the United States for the Northern District of Georgia being required by said Court to credit the value of said rents and profits upon said mortgage debt.

Your orator further shows that afterwards, on or about the 30th day of March, 1895, a second decree was rendered in said cause instituted in the said Circuit Court of the United States for the Northern District of Georgia by said Robinson as trustee, by which among other things, said mortgage was foreclosed and a sale of said mortgaged property was ordered, and the equity of redemption therein barred and foreclosed so far as the rights of the defendant corporations in said cause were concerned; that from said last mentioned decree said Huguley Manufacturing Company and said The Alabama and Georgia Manufacturing Company appealed to the United States Circuit Court of Appeals for the Fifth

Circuit, and upon said appeal said last mentioned decree was in all things affirmed, heretofore, to-wit: on or about the —— day of January, 1896; that in said cause, instituted as aforesaid by the said Robinson as trustee in the said Circuit Court of the United States for the Northern District of Georgia, on or about the 10th day of March, 1896, a decree was rendered ordering the property described in the said mortgage to be sold to satisfy the said decree rendered as aforesaid on or about the 30th day of March, 1895, and pursuant to the said decree of the 10th day of March, 1896, all of the property of The Alabama and Georgia Manufacturing Company described in the said mortgage "Exhibit A" hereto, was sold on or about the —— day of May, 1896, to one L. Lanier, representing a majority of the bondholders secured by said mortgage, and subsequently the said sale was confirmed by said Circuit Court of the United States for the Northern District of Georgia, on or about the 25th day of June, 1896, and subsequently, on or about the 15th day of October, 1898, was reconfirmed by said court; that in pursuance of said decree of confirmation of said last mentioned sale, the said Circuit Court of the United States for the Northern District of Georgia ordered that a deed be executed to said purchaser or anyone he might designate, conveying to him or to such one designated by him the said property free from all claims of said Huguley Manufacturing Company and others, and in pursuance of said order a deed was executed by director of the said L. Lanier, by the commissioner of said court appointed to conduct the said sale, conveying the title to all the said property to your auditor, and your auditor paid all the purchase money therefor into court, as required by order thereof.

That from the proceedings had in said Circuit Court of the United States for the Northern District of Georgia subsequent to the second remanding of said cause from the United States Circuit Court of Appeals for the Fifth Circuit, the said Huguley Manufacturing Company and the said The Alabama and Georgia Manufacturing Company prosecuted a third appeal on or about the 2nd day of December, 1898, to the United States Circuit Court of Appeals for the Fifth Circuit, and upon such last mentioned appeal the decrees involved therein of said Circuit Court of the United States for the Northern District of Georgia were in all things affirmed, and said affirmance remains in full force and effect. That heretofore, to-wit: on or about the 16th day of May, 1899, the said Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company sued out an appeal to the Supreme Court of the United States from said last mentioned decree of affirmance rendered as aforesaid by said United States Circuit Court of Appeals for the Fifth Circuit, and said appeal to the Supreme Court of the United States in said cause remains pending and undetermined.

V.

That the said proceedings in this Honorable Court hereinabove described and set forth in the said cause wherein J. J. Robinson as trustee was complainant and said The Alabama and Georgia Manufacturing Company and others were respondents, in which a foreclosure of said mortgage was sought and obtained by decree of this Honorable Court, fully appear by the records of this Court in said cause which is No. 360 on the Equity Docket of this Court, and which are hereby referred to and made a part of this bill of complaint, with leave to refer thereto as often as may be necessary, and the said proceedings in said cause in the said United States Court of Appeals for the Fifth Circuit and in the Supreme Court of the United States, appear by the records of said courts respectively, and your orator prays for leave to refer to the same, and hereafter to attach, if it should be necessary, copies of such portions of the said records of this court, and of the said United States Circuit Court of Appeals for the Fifth Circuit, and of the Supreme Court of the United States, as may be required for a full and complete understanding of the issues arising under this ancillary bill.

VI.

Your orator further shows that heretofore, to-wit: on or about the 2nd day of May, 1901, after the said Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company had prosecuted the appeal as aforesaid from the United States Circuit Court of Appeals for the Fifth Circuit to said Supreme Court of the United States, the said Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company filed in the Chancery Court for the County of Chambers and State of Alabama, their bill of complaint, a copy of which said bill of complaint is hereto attached as "Exhibit B" and made a part hereof, with leave to refer thereto as often as may be necessary; that said bill of complaint filed in said Chancery Court of Chambers County, Alabama, is filed against your orator, against the Galeton Cotton Mills, the West Point Manufacturing Company, J. J. Robinson, trustee, and the said W. T. Huguley, trustee; and orator avers that the said Galeton Cotton Mills is a corporation organized under the laws of the State of Alabama, to which said Lanier, Dallis, and Kirby, the purchasers at the first sale, ordered by the Circuit Court of the United States for the Northern District of Georgia, conveyed said property, and which sale was subsequently set aside on said first appeal to said United States Circuit Court of Appeals for the Fifth Circuit, as hereinbefore shown and set forth.

Orator further shows, that in and by the said bill of complaint filed as aforesaid in the Chancery Court of Chambers County, Alabama, it is averred in substance that the Alabama and Georgia Manufacturing Company was a corporation organized under the

laws of the state of Alabama, and as such was not made a party to that bill of complaint filed by the said J. J. Robinson, trustee, as aforesaid, and that no service of process was had in said suit filed by the said J. J. Robinson, trustee, upon said The Alabama and Georgia Manufacturing Company as an Alabama Corporation or upon its president, and further alleges that no attempt has ever been made by either direct or ancillary proceedings to subject the property described in said mortgage lying in the state of Alabama, and that all of the property described in said mortgage, is situated in the state of Alabama, and that no advertisement of the sale of said property, and no sale of said property was ever made in the state of Alabama. Said bill so filed in Chambers County, further avers in substance, that all of said judicial proceedings had in the said Circuit Court of the United States for the Northern District of Georgia, hereinabove described and set forth, were subsequently null and void in so far as said proceedings concerned or affected the title of The Alabama and Georgia Manufacturing Company, and of the Huguley Manufacturing Company to that part of the said lands lying in the state of Alabama. It is sought in and by the said bill filed in Chambers County, Alabama, to hold orator, the Galeton Cotton Mills, and the West Point Manufacturing Company liable for the rents and profits of said property since May, 1892, all of which will more fully appear by inspection of "Exhibit B" hereto.

VII.

Your orator further shows that each and all of the claims to relief set up by the said Huguley Manufacturing Company, and the Alabama and Georgia Manufacturing Company in said suit filed in said Chambers County, Alabama, were set up, or could have been set up, and adjudicated in said proceedings had in said Circuit Court of the United States for the Northern District of Georgia in the said suit filed by the said J. J. Robinson, as trustee, as aforesaid, as appears from the records and proceedings in said last mentioned cause. And orator avers that all the substantial issues raised and presented by said bill of complaint filed in Chambers County, Alabama, against your orator and others, were, or could have been, in said suit filed by the said Robinson, trustee, exhaustively investigated, adjudged and determined by this Honorable Court.

VIII.

Your orator further shows that the larger part of the property described in said mortgage lies and is situated in the state of Georgia, and the other part of said property lies or is situated in the state of Alabama, as the same is described in the said mortgage, a copy of which is hereto attached as "Exhibit A," and orator is advised by counsel and upon such advice avers, that the Circuit Court of the United States for the Northern District of Georgia acquired and had

full jurisdiction to order the sale of all of the property described in the said mortgage. Orator further avers that neither the Huguley Manufacturing Company, The Alabama and Georgia Manufacturing Company, nor the said W. T. Huguley, who are defendants to said bill filed by the said Robinson, trustee, as aforesaid, did ever during the progress of said cause in said Circuit Court of the United States for the Northern District of Georgia, raise any issue upon the jurisdiction of this Honorable Court to render a decree for the sale of all of the said lands, as aforesaid, and orator again avers that said property is indivisible.

Orator further shows that the said Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company, by the said bill of complaint filed as aforesaid in said Chambers County, Alabama, are seeking to again raise and have investigated by a court of equity, in fraud of the rights of your orator, the same identical matters and issues which have heretofore in the said suit filed by the said Robinson in this Honorable Court been passed upon and adjudicated by this court. Orator further avers that said suit filed in Chambers County, Alabama, is vexatious, harassing and improper to be entertained at any time and especially while the appeal prosecuted as aforesaid by the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company from the United States Circuit Court of Appeals for the Fifth Circuit to the Supreme Court of the United States is pending and undetermined. And orator avers that it is a flagrant violation of the rights of your orator as purchaser of this property under the final decree of this court for said Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company to be permitted to go into a foreign jurisdiction and compel orator to go to the great trouble and expense of defending a suit brought by them in said Chambers County, Alabama, when substantially all the matters raised in said suit filed in said Chambers County, Alabama, have been finally adjudicated and determined or could have been adjudicated and determined in the said suit filed in this Honorable Court by the said J. J. Robinson, trustee.

And orator further avers that the filing of the bill by said Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company in said Chambers County, Alabama, is nothing more nor less than an attack on the validity and integrity of all the decrees made in this Honorable Court, as well as the judgment rendered on the various appeals by the United States Circuit Court of Appeals for the Fifth Circuit in the said cause, in said suit of the said J. J. Robinson, trustee, as aforesaid, and is in contempt of this Honorable Court.

That your orator is advised by counsel and upon such advice avers as a matter of law that it has the right to invoke the jurisdiction of this Court, ancillary to the main case instituted by the said J. J. Robinson, as trustee, to protect it against the violation of its rights by the unjust and unconscionable conduct on the part of the

said Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company, in filing and prosecuting the said bill of complaint in the said Chancery Court of Chambers County, Alabama.

Your orator further shows that in the said bill of complaint filed in the said county of Chambers, in the state of Alabama, the said Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company are represented as Solicitor by the same identical J. M. Chilton, who acted for said two corporations as Solicitor in the said suit filed as aforesaid by the said J. J. Robinson, as trustee, and said two defendant corporations are also represented in said suit in said Chambers County by Solicitors who signed their names Welles, Bennett and Welles, but whose other names are unknown to orator, whose place or business orator is informed and believes, and upon such information and belief avers, is in the city of Washington, in the District of Columbia, and whose places of residence are unknown to orator; that the same J. M. Chilton is above the age of twenty-one years and a resident citizen of the city of Montgomery, state of Alabama; and said Solicitors are made party defendant hereto for the purposes of injunction only hereinafter prayed for.

In consideration whereof, and for as much as your orator is remediless in the premises at and by the strict rules of the common law, and is only relievable in a Court of Equity where matters of this kind are properly cognizable and reviewable; and can only obtain adequate relief by this bill being maintained in this Honorable Court ancillary to the said suit herein wherein said J. J. Robinson as trustee is complainant, being number 360, on the Equity Docket of this Court.

Wherefore: To the end that your orator may have that relief which it can only obtain in a Court of Equity, and that the said defendants may answer the premises, but not under oath or affirmation, the benefit whereof is expressly waived by your orator, it now prays your Honor to grant unto your orator your writ of injunction commanding the said The Alabama and Georgia Manufacturing Company, and the said Huguley Manufacturing Company, and J. M. Chilton and Welles, Bennett and Welles, as their attorneys and Solicitors, and all persons claiming to act under authority, direction or control of said defendants or either of them to absolutely desist and refrain from any further prosecution against orator or anyone who has acquired or may acquire title to or interest in the property involved through orator, or against anyone under whom orator derives title to said property or with whom orator is in priority of estate thereto, of said Equity cause in the said Chancery Court of Chambers County in the state of Alabama, and from the commencement or prosecution of any other suit or proceedings affecting the same matters involved in the equity cause in said Chambers Chancery Court, except the prosecution of the said appeal pending in the Supreme Court of the United States in the main case described

herein, until such time as your honor shall appoint and direct an order herein; and that upon such hearing the writ herein prayed for be made and confirmed until the final determination of this ancillary suit and that thereupon the said injunction may be made perpetual.

And may it please your honor to grant unto your orator such other or further relief in the premises as the nature of the circumstances of the case may require, and as may be in accordance with equity and good conscience.

And may it please your honor to grant unto your orator the writ of subpœna of the United States of America to be directed to The Alabama and Georgia Manufacturing Company, and the said Huguley Manufacturing Company, and J. M. Chilton, and Welles, Bennett and Welles, thereby commanding them and each of them at a certain day and under a certain penalty therein to be limited, personally to be and appear before your Honors in this Honorable Court and then and there to answer all and singular the premises and to stand, perform and abide by such order, direction and decree as may be made against them in the premises as shall seem meet and agreeable to Equity and good conscience.

And your orator will ever pray:

B. F. ABBOTT,
P. H. BREWSTER,
WATTS, TROY & CAFFEY,
Solicitors for Complainant.

STATE OF GEORGIA, }
Fulton County. }

Before me, Robert Braselton, a notary public in and for said State and County, personally appeared L. Lanier, who is known to me, and who, being by me first duly sworn, deposes and says that he is the Vice President of the Riverdale Cotton Mills and authorized to act for them in the premises; and further that the matters and things in the foregoing bill of complaint alleged are true and correct when averred as facts, and are true and correct to the best of his knowledge, information and belief when said allegations are made upon information or advice.

L. LANIER.

Sworn to and subscribed before me, this 8th day of June, 1901.

ROBT. BRASELTON,
Notary Public, &c.

(Copy.)

"Exhibit A" to Bill of Complaint of Riverdale Cotton Mills.

STATE OF GEORGIA, }
Troup County. }

At a meeting of the board of directors of the Alabama and Georgia Manufacturing Company held at the office of said company in the city of West Point, State of Georgia, on the 17th day of October, 1883, a majority of said board of directors being present the following resolutions were adopted:

Whereas the creditors of the company, namely: George Huguley, W. T. Walker, W. H. Huguley, W. H. Huguley & Company, and others have signified their willingness to accept in lieu of their present note against the company first mortgage bonds of the company.

It is ordered by the board of directors of the company that the officers of this company be and they are hereby authorized to issue bonds of the company not to exceed the amount of sixty-five thousand dollars, said bonds to bear date on the (1st) 7th day of January, 1884, and to run twenty years from date with the option of the company to pay off or call in any of said bonds after the expiration of five years from the date of the same, said bonds to bear interest at the rate of eight per cent. per annum, with interest coupons attached payable semi-annually, principal and interest payable at the office of the company in West Point, Georgia. And to secure the payment of the principal and interest of said bonds, the officers of the company be and they are hereby authorized and empowered to execute a first mortgage on all of the real property of the company, including mill, machinery, fixtures, and all appurtenances thereto attached, either to the holders of said bonds, or to the trustee for their benefit as may be agreed upon. Said bonds and mortgage to be signed by the President under the seal of the company, and countersigned by the secretary and treasurer. Said bonds to be issued in such denominations as may be determined upon by the officers of the company. Which said resolution was passed and adopted by virtue of the authority conferred at an annual meeting of the stockholders of said company held on the 27th day of July, 1881, and whereas the officers of said company, to-wit: W. H. Huguley first president, and W. H. Huguley and Company, its treasurers, and W. T. Huguley, its secretary, in conformity with said resolutions have issued the bonds of said company to the amount of sixty-five thousand dollars; each of said bonds for the sum of five hundred dollars due and payable on the (1st) 7th day of January, 1904, with interest coupons attached payable semi-annually on the 7th day of January and July of each year, for the sum of twenty dollars each, the principal and interest of said bonds payable at the office of the company in West Point, Georgia.

In which said bonds the said company reserve the right and the privilege to pay off and call in all of or any of said bonds and coupons then due and unpaid after the expiration of five years from the date of their issuance, which said bonds are numbered from one to one hundred and thirty inclusive.

Now this instrument made and entered into on this the 1st day of January, 1883, between The Alabama and Georgia Manufacturing Company of the first part, and J. J. Robinson, W. C. Yancey, and W. T. Huguley as the trustees of said bonds, of the second part, witnesseth, That The Alabama and Georgia Manufacturing Company, the said party of the first part, for and in consideration of the premises and for the purpose of securing the payment of principal and interest of said bonds, and the sum of one dollar in hand paid by the party of the second part, hath bargained, sold, transferred and conveyed, and by these presents doth bargain, sell, transfer and convey to the said J. J. Robinson, W. C. Yancey, and W. T. Huguley, as trustees aforesaid, their survivors and successors, the following real estate, to-wit: All of a large island in the Chattahoochee River designated as island No. Six (6) containing one hundred and forty-three (143) acres more or less; also Island No. Nine (9) containing seven acres more or less, also a small island between islands numbers nine and six upon which the east end of the factory building rests, containing four acres, more or less. All of the above three described islands being in Twentieth (20) District of Harris County, Georgia.

Also all that tract or parcel of land lying on the west side of the Chattahoochee River opposite the above described islands, bounded on the east by the said river, beginning at a point on the west bank of said river nearly opposite the center of the seven-acre island at a black gum, at or near a place known as Sulb's Corner—Thence a straight line to a point where the land owned in 1868 by Mrs. Freeman, Job. Ross, and James Campbell joined, known then as the Ross and Freeman corner, to a pine stake—thence a line to a branch near said stake, and thence to a line down said branch to the river and thence down the bank of the river to the beginning corner,—containing sixty-five 23-105 acre, more or less, lying and being in Chambers County, State of Alabama, and being a part of section twenty-eight (28) and twenty-nine (29) township twenty-one (21) range twenty-nine (29) as well as forty (40) foot right of way from the factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all the tenements and improvements including the cotton mill and all the machinery therein or thereto belonging and all water privileges and riparian rights now owned and enjoyed by the said party of the first part.

To have and to hold to the said J. J. Robinson, W. C. Yancey and W. T. Huguley, their survivors and successors in trust, nevertheless and for the uses and purposes herein set forth, that is to say upon trust for securing and providing for the full and complete

payment of the aforesaid sum of sixty-five thousand dollars ($65,000.00) with the interest due and owing by the said The Alabama and Georgia Manufacturing Company to the holder or holders of the said bonds or the coupons thereto attached hereinbefore referred to and described and in order and in the fullest manner to provide for the payment of the bonds aforesaid and the interest thereon at the time and place when and where the same shall respectively fall due and be payable, the said J. J. Robinson, W. C. Yancey and W. T. Huguley, or a majority of them, or their survivors or successors, are hereby authorized and empowered, should default be made in the payment of said bonds, when they fall due, or in the payment of the interest on said bonds, as it shall approve, then immediately on such default being made known by the holder or holders of said bonds, or holder or holders of the coupons attached thereto, and if after notice is served upon the president of said company, the same shall remain unpaid for six months after such default shall have been made in the payment if the said interest or principal as the case may be, and at the request of any one or more of the holders of said bonds or coupons and without any other or further authority from the said The Alabama and Georgia Manufacturing Company upon giving sixty days' notice of the time and place of sale together with a description of the property in a newspaper published in Atlanta, La Grange, and West Point, Georgia, to proceed to sell at public auction at the office of said company in the city of West Point, Georgia, for cash, the property herein conveyed, or a sufficient amount of the same to pay the amount due, and apply the proceeds of sale first, to the expense of sale, second, to the payment and liquidation of all the bonds and interest due on the same, and the surplus if any, to be paid over to the proper officer of said company, and to execute titles to the purchaser thereof and in the event the amount realized from the said of said property shall be sufficient to liquidate the whole of said debt, then the same shall be pro rated amongst the holders of said bonds and coupons. And for the further security of the holders of said bonds and coupons the said The Alabama and Georgia Manufacturing Company hereby stipulates and agrees that it will keep this factory building and machinery insured against loss by fire in good and responsible insurance companies to the extent of sixty thousand dollars, and on their failure to do so, the said trustees are hereby authorized to have the same so insured, the expense of the same to be paid in the same manner as is provided by the same payment said bonds and coupons, and the said The Alabama and Georgia Manufacturing Company hereby reserve to itself the quiet and peaceable possession of all of said property herein contained, and the right to control, use and manage the same and dispose of the products of said mills in such manner as it may see proper, not inconsistent with the purposes herein expressed until after default is herein divided. Now, if the said Alabama and Georgia Manufacturing Company shall pay off and dis-

charge all said bonds and coupons, then, and in that event, this conveyance to be null and void.

In witness whereof, W. H. Huguley, the president of said company, and W. T. Huguley, the secretary, and W. H. Huguley and Company, the treasurers of said company, have hereunto set their hands and affixed the seal of said company at its office in the city of West Point on the 2nd day of January, 1884.

W. H. HUGULEY, L. S.
President.
W. T. HUGULEY, L. S.
Vice President and Secretary.
W. H. HUGULEY & COMPANY, L. S.
Treasurers.

(Copy.)

Signed, sealed and delivered in the presence of
W. E. OSLIN. L. M. HARRIS, *J. P.*

We, the trustees named in the above instrument, hereby accept the trust reposed by the same.

J. J. ROBINSON, L. S.
WM. C. YANCEY, L. S.
W. T. HUGULEY, L. S.

Signed, sealed and delivered in presence of
W. E. OSLIN. L. M. HARRIS, *J. P.*

Filed in office for record, January 21st, 1884, and duly recorded January 24th, 1884.

J. J. ROBINSON,
Judge of Probate.

(Copy.)

"Exhibit B" to Bill of Complaint of Riverdale Cotton Mills.

To the Hon. R. B. Kelley, Chancellor of the First District of the Northeastern Chancery Division of the State of Alabama:

First.

Humbly complaining, show unto Your Honor, your Orators, the Huguley Manufacturing Company, a corporation organized under the laws of the state of Alabama, and the Alabama and Georgia Manufacturing Company, a corporation organized and incorporated by the General Assembly of Alabama, by act No. 183, on the 7th day of February, 1866, a copy of which act is hereto attached as "Exhibit A" as a part of this bill. That said last mentioned

corporation was duly organized under said charter, and was afterwards seized and possessed of the following lands, to-wit:

"All of a large island in the Chattahoochee River, designated as Island No. six (6), containing one hundred and forty-three (143) acres, more or less; also Island No. nine (9) containing seven (7) acres, more or less; also a small island between Islands Nos. Nine (9) and Six (6), upon which the east end of the factory building rests, containing four (4) acres, more or less. All of the three above described islands being in the Twentieth (20) District of Harris County, Georgia.

"Also, all that tract or parcel of land lying on the west side of the Chattahoochee River, opposite the above described islands, bounded on the east by said river, beginning at a point on the west bank of said river, nearly opposite the center of the seven (7) acre island at a black gum at or near a place known as "Sulb's (Sell's) Corner"—thence a straight line to a point where the land, owned in 1868 by Mrs. Freeman, Job Ross and James Campbell, joined, known then as the "Ross and Freeman corner," to a pine stake—thence a line to a branch near said stake, and thence to a line down said branch to the said river, and thence down the western bank of the river to the beginning corner—containing sixty-five and 23-100 (65 and 23-100) acres, more or less, lying and being in Chambers County, State of Alabama, and being a part of sections twenty-eight (28) and twenty-nine (29) township twenty-one (21), range twenty-nine (29), as well as forty (40) foot right-of-way from the factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all the tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now owned and enjoyed by the party of the first part."

Second.

That on the 2nd day of January, 1884, the said The Alabama and Georgia Manufacturing Company executed to J. J. Robinson, W. C. Yancey and W. T. Huguley, as trustees, a mortgage upon said lands hereinbefore described, together with the cotton manufacturing plant, which Orators had constructed, and which was situated thereon—said mortgage securing one hundred and thirty bonds of five hundred dollars ($500.00) each, bearing interest at eight per cent. (8%) per annum, due twenty years after date (1904), the bonds containing the clause that, if any default should continue on any instalment of interest for six months, after presentment at the office of the company, and after sixty days written demand and notice served upon the president, the bonds so in default might be declared due.

Third.

Orators aver that W. C. Yancey, one of said trustees, is now dead, and that, while interest on some of said bonds may not have been paid by said corporation for several years past, no steps have been taken by the surviving trustees, J. J. Robinson and W. T. Huguley, or by the holders of said bonds secured by said mortgage, to subject said property in the State of Alabama to the payment thereof.

Fourth.

Orators aver that in January, 1891, J. J. Robinson, one of the trustees under said mortgage, and a resident and citizen of the County of Chambers and State of Alabama, without consultation or co-operation with W. T. Huguley, the surviving co-trustee, filed a bill in the Circuit Court of the United States, for the Northern District of Georgia, praying to foreclose a portion of said bonds, the balance of the said bonds not being represented in the said suit.

That a corporation, known as the "Alabama and Georgia Manufacturing Company," alleged to be a corporation organized under the laws of Georgia only, and said Huguley Manufacturing Company, together with the said W. T. Huguley, were the sole defendants to said bill, said W. T. Huguley being made defendant as co-trustee, alleged to be interested adversely. The Alabama and Georgia Manufacturing Company, originally chartered and organized as a corporation under said Act of the General Assembly of the state of Alabama, never has been made a defendant thereto, and never appeared as a party to said cause, the president of said corporation, to-wit: W. H. Huguley, himself likewise a citizen and resident of the county of Chambers, State of Alabama, never having been served with notice either of said alleged default of interest, as expressly required under the terms of the trust deed, or notice of said suit of foreclosure against said Alabama and Georgia Manufacturing Company. No attempt was made, by either direct or ancillary proceedings, to subject the property lying in the state of Alabama to this suit. A portion of the property was erroneously described in the said mortgage as lying within the county of Harris, in the state of Georgia, while the orators aver that all of said property was and is situated within the county of Chambers, in the state of Alabama.

The property was not advertised in the state of Alabama, nor was any sale or pretense of sale conducted in said state.

Under the proceedings of the United States Circuit Court, for the Northern District of Georgia, the foreclosing bondholders secured a pretended sale of said property, and they, or parties claiming under them, took possession of not only that portion of the property which, it was claimed by them, erroneously and without reason of law and fact, to lie within the state of Georgia, but also of that portion which was admitedly situated in the state of Alabama.

Orators further aver that, pursuant to such proceedings had in said cause, such lands and improvements thereon were, on the 6th day of September, 1892, exposed to sale in Atlanta, Georgia, and that, at said sale, one L. Lanier and one A. T. Dallis, and one J. T. Kirby, bought for certain holders of the bonds secured by said mortgage, and thereupon a corporation was organized under the laws only of the state of Alabama, under the corporate name of "The Galeton Cotton Mills." A copy of said charter is hereto attached, marked "Exhibit B," as a part of this bill.

That said corporation, and those claiming under them, took possession as aforesaid of said manufacturing plant and all its appurtenances, supplies, and findings, etc., and remained in possession until the 6th day of May, 1896, receiving throughout the whole of said period the rents and profits arising from the operation of said manufacturing plant, amounting to a large sum, to-wit: two hundred and twenty-eight thousand ($228,000.00) dollars.

Orators aver that said decree of foreclosure was reversed, annulled and vitiated on appeal to the United States Circuit Court of Appeals, for the Fifth Circuit, and thereupon another decree of foreclosure was rendered in said United States Circuit Court, for the Northern District of Georgia, and on, to-wit: the 6th day of May, 1896, said property was again exposed to sale, under the said decree, at Hamilton, Harris County, Georgia, and the same was bid off in the name of L. Lanier as "Agent and trustee for the mortgage bondholders."

Orators aver that after the last mentioned sale there was no change of possession until October or November, 1898, when, by order of said Court, directing that a conveyance be executed to "L. Lanier as trustee, or to such person or persons as he may direct," some officer, appointed by said court, executed what purported to be a deed of conveyance of all of said property to a corporation, organized only under the laws of Alabama, under the name of "The Riverdale Cotton Mills," and since that time said manufacturing plant has been operated under said corporate name. Orators aver that none of said judicial proceedings were final, but that all of them are now pending upon appeal in the Supreme Court of the United States.

Orators aver that the said West Point Manufacturing Company, a corporation organized only under the laws of the state of Alabama, was the principal, if not sole stockholder, of both the said "Galeton Cotton Mills," and of the said "Riverdale Cotton Mills," and as such has received the rents and profits derived from the operation of said property from the sixth day of September 1892, down to the present time.

Orators allege that the officers, directors and stockholders in each of said corporations, to-wit: "The Galeton Cotton Mills," "The Riverdale Cotton Mills," and "The West Point Manufacturing Company," were the same; that, as matter of fact, the said "Galeton Cotton Mills" and the said "Riverdale Cotton Mills" were

"dummy" corporations—the West Point Manufacturing Company being, as orators aver, the real owner of the assets of said corporations and exercising and controlling all their corporate franchises and functions.

Orators further aver that said West Point Manufacturing Company caused the said corporations, to-wit: "The Galeton Cotton Mills" and the said "Riverdale Cotton Mills" to be formed with the purpose and design of escaping liability for the rents and profits of said property.

Orators aver that the said rents and profits, derived from the operation of said property, from the 6th day of September, 1892, down to the 6th day of May, 1896, amounted as aforesaid to the sum of two hundred and twenty-eight thousand ($228,000.00) dollars, with interest; and from the said last named date, to-wit from the 6th day of May, 1896, down to the present time (say 1st day of May, 1901,) have amounted to a large sum, to-wit: over three hundred thousand ($300,000.00) dollars, with interest.

Orators aver that, during the possession of the said Galeton Cotton Mills and of the Riverdale Cotton Mills, great damage was done and waste committed in respect to the said property, aggregating to-wit: about fifty thousand dollars ($50,000.00).

Fifth.

Orators aver that it was disclosed on the face of each of said judicial proceedings in the State of Georgia that a part of said property was situated in the State of Alabama. But it was and still is insisted by each of said corporations that another part of said property was situated in the State of Georgia, and that the title to the whole of said property passed under the said judical proceedings. Said part of said property claimed by said defendant corporations to be situated in the State of Georgia is as follows; to-wit:

"All of a large island in the Chattahoochee River, designated as Island No. Six (6), containing One Hundred and Forty-three (143) acres, more or less; Also Island No. Nine (9) containing Seven (7) acres, more or less, also a small island between islands Nos. nine (9) and Six (6) upon which the east end of the factory building rests, containing four (4) acres, more or less. All of the three above described islands being in the Twentieth (20) District of Harris County, Georgia."

Orators aver that whether any of said property is situated in the State of Georgia, or whether the whole of it is situated in the State of Alabama, depends upon the boundary line between the State of Alabama and the State of Georgia. Orators insist and now aver that the whole of said real estate lies in the State of Alabama.

Orators aver that the west bank of the main stream of the Chattahoochee River, beginning at or near West Point, Georgia, and extending down to the Gulf, is the boundary line between the State of Alabama and the State of Georgia, and that all of said property

lies upon the west bank of said main stream of the Chattahoochee River, and that the greater portion thereof, embracing all the main factory buildings, warehouses, operative and other houses, in short, the entire real estate, comprising said sixty-five and 25/100 acres, more or less, upon which land said factory village or town is established, all are situated not only west of said west bank of the Chattahoochee River, but west of a certain tributary thereof hereinafter referred to, and the whole property lying in the County of Chambers and State of Alabama.

Defendants claim that two islands or more, artificially made and fed by three creeks flowing from the Alabama side, and reinforced by the diversion from the main stream of the Chattahoochee River of a portion of its water supply, artificially forced around and confined by the erection of certain dams, which stream, as aforesaid, at the plant of said West Point Cotton Mill, thence flows a short distance in the State of Alabama and empties into the river below the said islands, and east of all the remainder of the said property or factory plant, are in the State of Georgia. But orators aver that all of the lands covered by said islands lie in the State of Alabama, and that all of said lands, location of which in Alabama is disputed, are a part of fractional section thirty-three (33) township twenty-one (21), N. of range twenty-nine (29), E. St. Stephen District, Alabama, description of which appears upon the records in the office of the Secretary of State of Alabama, and includes all the lands in controversy. The official field notes, as prepared by the Secretary of State of Alabama from the maps and surveys on file in his office, is filed herewith, marked "Exhibit C" as part of this bill.

It is contended, on the other hand, by said corporations, respondents to this bill, that a portion of said property is situated in the State of Georgia, as aforesaid, and by reason of said diverse contentions, a controversy has arisen and now exists in respect to the boundary line between the said States of Alabama and Georgia.

Sixth.

Orators further allege, upon advice of their solicitors, that all of said judicial proceedings in the State of Georgia are absolutely null and void in so far as concerns or affects the title of your orators to said lands, in this: that all of said lands were, as your orators again aver, situated in the State of Alabama.

But, if orators are mistaken in the averment that all of said lands were situated in the State of Alabama, and that, therefore, the conveyances executed thereunder passed no title to any part of the said lands, and it should appear that any portion of said lands were situated in the State of Georgia, then and in that event, your orators aver that said sale is, if said decree is divisible, at all events invalid as respects the lands situated in Alabama, to-wit:

"Also, all that tract or parcel of land lying on the west side of the Chattahoochee River, opposite the above described islands,

bounded on the east by said river, beginning at a point on the west bank of said river nearly opposite the center of the seven (7) acre island, at a black gum, at or near a place known as "Sulb's (Sell's) Corner"—thence a straight line to a point where the land, owned in 1868 by Mrs. Freeman, Job Ross, and James Campbell, joined, known then as the Ross and Freeman Corner, to a pine stake—thence a line to a branch near said stake, and thence to a line down said branch to the said river, and thence down the western bank of the river to the beginning corner—containing sixty-five and 23/100 (65-23/100) acres, more or less, lying and being in Chambers County, State of Alabama, and being a part of section twenty-eight (28) and twenty-nine (29), township twenty-one (21), range twenty-nine (29), as well as forty foot (40) right of way from the factory building to the public road leading from West Point, Georgia, to Berlin, Alabama, at any point where the factory company may locate it, including all the tenements and improvements, including the cotton mill and all the machinery therein or thereto belonging, and all water privileges and riparian rights now owned and enjoyed by the said party of the first part," (to-wit: The Alabama and Georgia Manufacturing Company).

Seventh.

Orators aver that said West Point Manufacturing Company claims and insists that, in the course of the said judicial proceedings in the Circuit Court of the United States, it or said corporations identified with it, as aforesaid, has paid off and discharged a large number of said bonds secured by said first mortgage, or has otherwise obtained a legal or equitable title to the same. If such be the fact, Orators admit and concede that the said West Point Manufacturing Company is entitled to be reimbursed, if it has paid such bonds, or to receive payment of the same if they, or said other corporations, own the same, and in either event, to receive interest on the amount so paid out or so due. And Orators offer to pay the same as a credit on the rents and profits so received by the said West Point Manufacturing Company, or said other corporations, if such rents and profits should extend so far forth, and further, offer to pay any deficiency that might exist. But, if your Orators are mistaken in averring that said West Point Manufacturing Company, or said other corporations, has paid or is the legal or equitable owner of the said bonds, and if it should appear that said bonds are still outstanding and unpaid, then and in that event, Orators offer to pay whatever sum is due on the said bonds, and submit themselves fully to this Honorable Court to do and to perform what may be adjudged to be equitable in the premises.

Orators, the Huguley Manufacturing Company, a corporation, avers that it purchased and acquired all the property hereinabove described subject to said mortgage, and is now the owner of the same, subject to said mortgage.

Orators make parties defendants to this bill, the said Galeton Cotton Mills, the said Riverdale Cotton Mills and the said West Point Manufacturing Company, and the said J. J. Robinson, trustee, who is over the age of twenty-one years and who resides in the County of Chambers, State of Alabama, and also said W. T. Huguley, trustee, who is over the age of twenty-one years and resides in the city of New York, State of New York, and pray that summons issue to said resident defendants, and that publication be had as to said non-residents, requiring each to plead, answer or demur to this bill of complaint within the time prescribed by law.

Premises Considered, may it please Your Honor to adjudge and decree that your Orators, as mortgagors, are entitled to redeem said mortgaged property, and that said equity of redemption has never been cut off by any of the said judicial proceedings aforesaid and that an account of said mortgage debt be taken. That Your Honor will cause it to be referred to a Master to ascertain the rents and profits earned or that should have been earned, and all wastes, damages and conversions committed by said Galeton Cotton Mills, and by said Riverdale Cotton Mills, and by said West Point Manufacturing Company, and by said J. J. Robinson, trustee, and to further ascertain how much of said rents and profits have been or should have been received by said West Point Manufacturing Company.

That Your Honor, upon the coming in of such report, if it shall appear that said West Point Manufacturing Company is itself, or through said other corporations, as alleged in this bill, the legal or equitable owner of said bonds, will direct the same to be treated as paid out of said rents and profits. But, if said bonds have not been so paid and are not so held and owned, that your Orators be decreed entitled to redeem the whole of said property, or if not the whole, then such portion of said property which is situated in the State of Alabama, if such portion be less than the whole, by paying the same with the interest thereon. And that, at all events, a decree be rendered in favor of your Orators against said parties, herein sought to be charged, for said rents and profits earned or that should have been earned, and all wastes, damages and conversions.

Orators pray that, as the said defendant corporations, whom your Orators aver are mortgagees now in possession, deny to Orators all rights to the profits and rents of said property, although they have already received far more than can be due them by reason of their interests as mortgagees, it will result in doing injury to Orators, and deprive them of their just rights to allow said parties to operate the said mills during the pendency of this suit, and, as the stopping of the mills would result in irreparable injury, this Honorable Court appoint a receiver, who shall be empowered to continue said business under such orders as this Honorable Court may deem necessary or proper. And Orators pray that the property be kept insured for the benefit of such parties as this Honorable Court may decree to be entitled thereto.

And if mistaken in this special relief prayed, Orators pray for such other and further or different relief as the nature of the circumstances of its case may require, and as to equity may seem meet, and Orators will ever pray, etc.

Note.

The defendants, to-wit: the said Galeton Cotton Mills, and the said Riverdale Cotton Mills, and the said West Point Manufacturing Company, and the said J. J. Robinson, trustee, and the said Wm. T. Huguley, trustee, are required to answer each paragraph of the foregoing bill, but oath to answers is waived.

(Signed) J. M. CHILTON,
WELLES, BENNETT & WELLES,
Solicitors for Complainants.

(Copy.)

Exhibit A.

An Act to Incorporate the Alabama and Georgia Manufacturing Company.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That James Metcalf, George Huguley, Benjamin H. Hill, William P. Chilton, and George W. Huguley, together with such other persons as may hereafter be associated with them, and their successors, be and they are hereby made and constituted a body corporate in fact and in name, under the name, style and title of "The Alabama and Georgia Manufacturing Company," and by that name shall be, and are hereby made able and capable at law, to have, hold, receive and purchase, possess and enjoy to them and their successors all real and personal estate, of whatever kind or amount said corporation may deem necessary to carry all the objects of said corporation into full force and effect, and may sell, grant, convey or otherwise dispose of the same, and may sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all courts having competent jurisdiction; to make, use and have a common seal, and the same to alter, break and review at pleasure, and to do all the acts incident to a body corporate and politic.

Sec. 2. Be it further enacted, That the objects of said corporation shall be the manufacture of wool and cotton into thread and cloth, the manufacture of meal, flour, lumber, shingles, boards and machinery of any description, or such branches or parts thereof as they see proper to engage in. The place of business shall be on the Chattahoochee River, in the neighborhood of Campbell's Mills, in the County of Chambers and in the State of Alabama; and to enable the said persons named in the first section of this charter to

carry out the purposes of this charter, they and their successors and associates may control and use the water of the Chattahooche River, so far as the riparian rights of this State are concerned, by locks, dams, canals, or otherwise, for manufacturing purposes generally; and to secure their property against loss by fire or other injuries, may prevent persons from building fires or camping within two hundred yards of the factory buildings.

Sec. 3. Be it further enacted, That said body corporate shall have power to prescribe the number of shares into which the capital stock of said corporation shall be divided, the mode in which it shall be taken, paid, transferred or assigned, and also to prescribe the mode by which stockholders shall vote, and the number of votes to which each share shall be entitled; that the rules adopted shall be uniform, equally securing the rights of each stockholder; and also to provide for the election of such officers as may be deemed necessary for the government and management of the affairs of the corporation, to ordain, establish, and put in execution such by-laws, ordinances and resolutions as they shall deem necessary and expedient for the government of said corporation, not inconsistent with the Constitution and Laws of the State of Alabama, or of the United States; and in general to do and execute all and singular the acts, matters and things which may be necessary for manufacturing.

Sec. 4. Be it further enacted, That said corporation shall not exercise banking privileges, but is authorized to carry the foregoing granted powers into execution, according to the true intent and meaning thereof.

Sec. 5. Be it further enacted, That said corporation shall have power to borrow money and to loan out its surplus earnings on similar security or mortgage, and to ordain such rules and regulations in respect to stockholders who refuse to pay up any balance on their stock, and to compel him to pay upon penalty of forfeiture to said corportion; provided that no stockholders shall be liable beyond the amount of his, or her, or their stock.

Approved February 7, 1866.

Exhibit B.

The Galeton Cotton Mills.

STATE OF ALABAMA, *Chambers County.*

To the Probate Judge of said County:

L. Lanier, of Chambers County, Alabama, and A. T. Dallis, of La Grange, Troup County, Georgia, and L. J. Blackmon, of West Point, Ga., having associated themselves for the purpose of manufacturing, under the name and style of the Galeton Cotton Mills, desire for themselves and such other persons as may be associated with them, to be incorporated under the above name and style. The capital stock of said corporation to be one hundred thousand dollars each. The general purpose of said corporation is to convert

raw material into manufactured goods, and the particular business proposed is to convert cotton into yarns and cloth, the object being pecuniary profit for the stockholders, said corporation to have its principal place of business in Chambers County, Alabama, near West Point, Ga.

For the purpose of organizing said corporation, they desire that commission issue authorizing them to open books of subscription to the capital stock of said corporation.

L. LANIER,
A. T. DALLIS,
L. J. BLACKMON.

Filed in this office Sept. 14, 1892.

J. J. ROBINSON, *Judge of Probate.*

Probate Court.

STATE OF ALABAMA, }
Chambers County. }

To L. Lanier, A. T. Dallis, and L. J. Blackmon.

Whereas you have this day filed in the office of the Judge of Probate of said Chambers County, Alabama, your declaration in writing, praying to be formed into a corporation under the name and style of the Galeton Cotton Mills, Complying in said declaration with section 1558 of the Code of Alabama.

You are hereby authorized as commissioners to open books of subscription to the capital stock of said proposed corporation at such time and place and upon such notice as you may appoint.

J. J. ROBINSON,
Judge of Probate, Chambers Co., Ala.

Sept. 14, 1892.

WEST POINT, GA., *September 15th, 1892.*

Pursuant to a call made by the commissioners authorized by Judge J. J. Robinson under date September 14, 1892, to open books of subscription to the capital stock of the Galeton Cotton Mills, L. Lanier and L. J. Blackmon, representing a majority of the capital stock of the Galeton Cotton Mills, met at the banking office of W. C. and L. Lanier, West Point, Ga., and proceeded to the organization of the company, by electing three members of a board of directors for the term of one year, or until their successors are elected and qualified, postponing the election of other directors until some subsequent day. L. Lanier, A. T. Dallis and L. J. Blackmon were elected. Demand for the payment of twenty per cent. of the subscription of fifty thousand dollars was made, and the amount paid in cash from L. Lanier, A. T. Dallis and L. J. Blackmon.

Meeting adjourned subject to call of L. Lanier.

L. LANIER,
L. J. BLACKMON.

STATE OF GEORGIA, *Troup County.*

In person came before me L. Lanier, who on oath says that the following is a list of subscribers to the Galeton Cotton Mills Capital Stock: L. Lanier, $49,000.00; A. T. Dallis, $500.00; L. J. Blackmon, $500.00. And that the above is a copy of minutes of meeting of subscribers.

PHIL LANIER, *N. P.* L. LANIER.

Filed in office Sept. 17, 1892. J. J. ROBINSON, *Judge of P.*

Probate Court.

STATE OF ALABAMA, }
Chambers County. }

To L. Lanier, A. T. Dallis and L. J. Blackmon:

Whereas, it appearing from papers on file in the office of the Judge of Probate, of the County of Chambers, State of Alabama, that such proceedings have been had under and pursuance of Chapter five, Title and part two, of the Code of Alabama, as entitled you to be and become a corporation under the name and style of The Galeton Cotton Mills.

Now, be it known, that you are duly organized as a corporation under said corporate name and style, and for the purposes expressed in the declaration on file in this office, having the power, capacity and authority conferred by law.

Witness my hand this 17th day of September, A. D. 1892.

J. J. ROBINSON,
Judge of Probate Court.

STATE OF ALABAMA, }
Chambers County. }

I, A. J. Driver, Jr., Judge of Probate of said County and State, hereby certify that the above is a correct copy of the papers on file in this office in the matter of the incorporation of the Galeton Cotton Mills, as they appear of record in Book of Corporations, pages 63-66 inclusive. Witness my hand and seal of office this 2nd day of May, 1901.

A. J. DRIVER, JR.,
Judge of Probate.

(10 cents documentary rev. stamp.)

No. 13. This License expires Dec. 31, 1898. Amount Received $40.00. No. of Tres. Receipt. State $40, County —

License.

THE STATE OF ALABAMA, }
County of Chambers. }

This is to certify that Riverdale Cotton Mills has deposited with the Judge of Probate of said County the sum of Forty Dollars, as

required by law, and it is therefore authorized to transact business as a corporation at River View, Ala., and at no other place.

W. S. WHITE, *Auditor.*

Countersigned Jan. 16, 1899,
A. J. DRIVER, Jr.,
Judge of Probate.

STATE OF ALABAMA, }
Chambers County. }

I, A. J. Driver, Jr., Judge of Probate in and for said County, do hereby certify that the above is a true and correct copy of a license issued to Riverdale Cotton Mills, a corporation, Jan. 16, 1889, by me as Judge of Probate for said County, as same appear of record on page 153 of Record of License in this office.

Witness my hand and seal of office this second day of May, 1901.

SEAL. A. J. DRIVER, Jr.,
Judge of Probate.

(10 cents documentary revenue stamp.)

Exhibit C.

THE STATE OF ALABAMA. *Department of State.*

I, Robert P. McDavid, Secretary of State, do here by certify that the pages hereto attached contain a true, accurate and literal copy of Field notes of section 33, township 21 N., of range 29 E., St. Stephens District, Ala., as the same appears on file and of record in this office.

In witness whereof I have hereunto set my hand and affixed the Great Seal of State, at the Capitol, in the city of Montgomery this 1st day of May one thousand nine hundred and one.

ROBT. P. McDAVID,

(GREAT SEAL.) *Secretary of State.*

Filed notes of Fractional Section 33, Township 21 N. of Range 29 E., of St. Stephens District, Ala.

Beginning at the northwest corner, thence east land broken 3 rate growth oak and hickory under growth pine and gum

40.00 Set up the 1/2 mile post from which
N 22 E 0c. 20 Post Oak 1/4 s
S 35 E 0.13 Red Oak 1/4 s

50.00 To 2nd rate land, growth oak and hickory undergrowth sassafras and opossum

80.00 Set up the northeast corner, from which

N 58 E 1c.20	Hickory	12	29	21–27
N 02 W 0.14	Red Oak	20	"	" 28
S 03 W 0.39	Hickory	9	"	" 33
S 08 E 0.40	"	11		34

Beginning at the NE corner thence South, land level, 2nd rate, growth oak, pine and hickory, undergrowth shumach and ash. Set up the fractional post on river bank, from which—

27.50 S 80 W 0.25 Beech 1/4 S 14–29–21–33
S 85 E 0.25 White Oak 1/4 S 9–29–21–30

Meanders down the river, commencing at the southwest corner of F. S., thence

N 70 W 6.50		
West 5.50	S 23 W 5.00	
N 66 W 3.50	S 14 E 2.00	
N 54 W 4.00	S 41 W 2.50	
N 85 W 6.00	N 51 S 10.00	
S 74 W 5.00	S 26.30 W 9.50 or 7.50	
S 47 W 8.00	S 45 W 8.00	
S 10 W 5.50	S 03 E 9.00	
S 17 E 3.50	S 04 E 6.00 to F post on township line.	

Beginning at the northwest corner, thence south, land broken, 3 rate growth pine and chestnut, undergrowth pine and blackjack

40.00 Set up the 1/2 mile post from which
N 81 E 0.49 Black Jack 1/4 s
N 56 W 0.07 Pine 1/4 s

40.24 1/2 1/4 section post.

80.49 to the southwest corner from which

N 61 E 0.75 Red Oak	10–29–21–33
N 40 W 0.06 Hickory	5–29– " –32
S 50 W 1.00 Pine	16–29 " 5
S 81 E 0.72 Post Oak	7–29 " 4

Beginning at the southwest corner (township line, 2 mile post) 26.00 thence east land waving Set up Fr. post on the west bank of the Chattahoochee River, from which

N 25 E 0.42 White Oak	27–29–21–33
S 19 E 0.80 Beech	13 " 20–04

Department of State. Alabama. Robert P. McDavid, Secretary of State. Montgomery, July 31, 1900. Mr. W. T. Huguley, 92 Franklin St., New York City. Dear Sir: As requested in your letter of the 26th inst., I herewith enclose you copy of the field notes for fractional section 33, T. 21 N., Range 29, E., as the same appears on file in this office. For this service I am required under the law to turn one dollar into the treasury, which please remit to, Yours very truly, Robert P. McDavid, Secretary of State. Enc.

THE HUGULEY MANUFACTURING COMPANY & THE ALA. & Ga. Mfg. Co.,

vs.

THE WEST POINT MANUFACTURING COMPANY, THE Galeton Cotton Mills, and the Riverdale Cotton Mills, and J. J. Robinson, Trustee, *et al.*

In the Chancery Court of Chambers County, Alabama.

I, William T. Huguley, both for myself in person and as trustee of the first mortgage bondholders of the Alabama and Georgia Manufacturing Company, do hereby accept service of the foregoing bill, and waive service, by publication of the same.

Witness my hand this the 3rd day of May, 1901, at LaFayette, Ala.

WM. T. HUGULEY.

Witness:
ARMSTEAD BROWN.

(Copy.)

Original Bill filed May 2, 1901.
No. 625. Chambers County Chancery Court.

Upon presentation of the foregoing bill and upon motion of complaint,—

It is ordered that complainant be and it is hereby allowed to file the said bill of complaint, and the clerk is ordered to file the same and to docket the cause, all without prejudice to the rights of defendants or any of them.

At Chambers, Atlanta, Georgia, this 10th day of June, 1901.

WM. T. NEWMAN,
U. S. Judge.

Read and considered.

It is ordered that the defendants named in the bill of complaint show cause before me at the United States Circuit Court Room in Atlanta, Georgia, on the 20th day of June, 1901, at ten o'clock A. M., why an injunction should not issue as prayed for in the bill.

In the meantime and until the hearing is had the defendants are restrained from further proceeding in the cause in the Chancery Court of Chambers County, Alabama, wherein the Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company are complainants and The Riverdale Cotton Mills and others are defendants, as prayed for in the bill in this cause.

Let copy of this order and subpœna be served on each of the defendants wherever found.

At Chambers, Atlanta, Ga., this 10th day of June, 1901.

WM. T. NEWMAN,
U. S. Judge.

Filed in Clerk's Office June 10, 1901. O. C. Fuller, Clerk.

Circuit Court of the United States, for the Northern District of Georgia.

THE RIVERDALE COTTON MILLS,
v.
THE ALABAMA & GEORGIA MANUFACTURING CO., ET AL. } In Equity.

To the Honorable Circuit Court of the United States, For the Fifth Circuit, Sitting for the Northern District of Georgia and to the Judges and Justices of said Court:

Comes the Alabama & Georgia Manufacturing Co., and the Huguley Manufacturing Co., each a corporation under the laws of Alabama, John M. Chilton, and Welles, Bennett & Welles, a partnership, and for answer to an order of this court made and entered in the above entitled cause, requiring them to show cause on the 20th day of June, 1901, why the injunction should not be issued in said cause, says:

First.

These respondents deny that their action in bringing the suit in the Alabama Court is or can be construed into a contempt of this Court. The complainants in said bill are both, corporations chartered under the laws of Alabama, owning property in Alabama, and are advised that they are not concluded or affected by the proceedings heretofore had in this Honorable Court since they were not parties thereto. That while said Alabama & Georgia Manufacturing Co. may have been incorporated in the State of Georgia, it was also incorporated in the State of Alabama prior to the incorporation in the State of Georgia. And these respondents aver that there never was, by the action of the State of Georgia and Alabama any merger or consolidation of said two corporations. They therefore, allege that said Alabama & Georgia Manufacturing Company incorporated under the laws of Alabama, was a distinct and separate legal entity from the Alabama & Georgia Manufacturing Company incorporated under the laws of Georgia. And these respondents aver that, as disclosed by the original bill filed in said foreclosure proceedings filed in this Honorable Court, the Alabama & Georgia Manufacturing Company, as a corporation created under the laws of Georgia was made a defendant thereto and not the Alabama corporation of the same name—the address of said bill being in this respect as follows: "J. J. Robinson as trustee for the purposes hereinafter stated, who avers himself to be a citizen of and residing in the State of Alabama, brings this his bill against the Alabama & Georgia Manufacturing Company, a corporation created under and by virtue of the laws of the State of Georgia and a resident and citizen of said Northern District of Georgia; and against the Huguley Manufacturing Company, a corporation created under the laws of said State of Georgia" &c. That while said Huguley Manufacturing Company, was alleged in said bill to have been incorporated under the laws of Georgia, the defendants aver that as

a matter of fact it was never so incorporated. This they allege on information and belief. It is also insisted in said Alabama proceedings that the decree of this Honorable Court in said foreclosure cause is not conclusive upon them, even if they were, in contemplation of law, parties thereto—their insistence in this respect being that this Honorable Court was without jurisdiction to render said decree both on account of the citizenship of the parties to said proceeding and the fact that a part if not all of the property decreed to be sold was situated in the State of Alabama. But if, by any possible construction, the action of these respondents in bringing the Alabama suit could be held technically a contempt of this court, they disclaim all motive and intention that could make it actually so.

Second.

For further answer, these respondents say that this Honorable Court is without jurisdiction of this cause or to issue an injunction therein for this: that this proceeding is an original and not an ancillary proceeding, and if the allegations of the bill be true, the complainant is a citizen of the State of Georgia while the defendant corporations are also citizens of the State of Georgia. That, as disclosed by the bill in this cause, no suit to foreclose said mortgage is now pending in this Honorable Court but on the contrary, is pending in the Supreme Court of the United States.

Third.

For further answer, respondents say that this Honorable Court is without jurisdiction to issue the injunction prayed. That neither the proceedings in said former cause nor the present proceedings in this court relate to proceedings in bankruptcy, and it is expressly provided by section 720 of the Revised Statutes of the United States as follows: "The writ on injunction shall not be granted by any court of the United States to stay proceedings in any court of a state except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

Fourth.

Further answering, these respondents say that this court ought not to take cognizance of this cause for this: That after the filing of said bill in the Chancery Court of Alabama all the defendants thereto, including J. J. Robinson as trustee and also including the present complainant, the Riverdale Cotton Mills, without filing any plea in abatement of said suit, filed therein their demurrers, pleas and answers, setting up substantially the same defenses as are now urged in the original bill in this cause. That as the fact of appearing in said Alabama Court is not made to appear in the bill on file, these respondents now attach to their answer to said rule, a copy of said demurrers, pleas and answers, making the same a part hereof and marking the same Exhibit "A."

Fifth.

For further answer, respondents aver that this Court was without jurisdiction of said original foreclosure cause for that the complainant therein and the Huguley Manufacturing Company were citizens of the same State, to wit: the State of Alabama. In this connection, respondents aver on information and belief that said Huguley Manufacturing Company was never incorporated or organized in the state of Georgia although, as they further aver, the solicitors who represented said corporation in said former litigation in this court were not aware it was not so incorporated, and said fact was not discovered until after the filing of said suit in Alabama, and before the bringing of this suit.

Sixth.

Respondents, further answering, say that this Honorable Court was without jurisdiction to make sale of the property within said mortgage for this: that the Huguley Manufacturing Company was a corporation under the laws of Alabama and not otherwise and that the charter of the Alabama & Georgia Manufacturing Company, granted in the State of Georgia expired by legal limitation, whereby said corporation was dissolved, before any sale was made of said property in said foreclosure proceedings.

Seventh.

Further answering, these respondents say that this court was without jurisdiction to sell said mortgaged property for this: That all of said property was situated in the State of Alabama, as shown by the original filed notes and government surveys. This they state on information and belief.

Eighth.

For further answer they allege that this Honorable Court was without jurisdiction to sell that portion of the mortgaged property lying in the State of Alabama. And if mistaken in the averment that all of it is situated in Alabama, they aver that a large and valuable portion of said property was situated in said State of Alabama, as will appear from the mortgage attached as part of the original bill filed in said foreclosure proceedings. Said mortgage is also attached as an Exhibit hereto marked Exhibit "b" as a part hereof. In this connection respondents deny that said property in Alabama and in Georgia are parts of an indivisible whole. On the contrary they aver that the island described in said mortgage as "All of a large island in the Chattahoochee river, designated as island No. Six (6), containing one hundred and forty-three acres more or less," is not necessary to or used in connection with the operation of said manufacturing plant but has long been rented from year to year for agricultural purposes.

Ninth.

Respondents aver again that the Alabama & Georgia Manufacturing Company is a corporation chartered by the laws of Alabama, a copy of which is attached to the Bill filed in this cause in exhibiting the Record of the above stated suit in Chambers County, Georgia also granted a charter to a Company of the same name which as part hereof they attach hereto a copy of its charter and mark the same Exhibit "C." Said charter expired on March 21st, 1896. That the Huguley Manufacturing Company is also a corporation organized under the general laws of Alabama, and a copy of the proceedings organizing the same, including its charter, is hereto attached as Exhibit "D" as part hereof. Respondents aver that these two corporations so organized are the parties complainant to the suit in Alabama. That said corporations were never parties as corporations under the laws of Alabama to said foreclosure proceedings; that said bill filed in Alabama is a proceeding for redemption, whereas the proceedings in Georgia were proceedings for foreclosure. That the defendants to said bill in Alabama have pleaded, answered and demurred thereto; that said Chancery Court held its regular term on the 10th day of June, 1901, when said cause was, without any notice that the present proceeding had been instituted, or that this Honorable Court had issued any restraining order, called for trial, and submitted for decision on the demurrers interposed by all the defendants, and was set down for argument. Respondents aver that in this state of the record with the parties to said foreclosure proceedings different from said parties to said Alabama suit; with the issues in the two causes different; and with undoubted jurisdiction of said Alabama Court—this Court has not jurisdiction to entertain this proceeding or to issue an injunction therein. And respondents aver, that the Riverdale Cotton Mills ought not, after it has invoked the decision of the questions here involved by its plea, answer and demurrer in said Alabama Court, be permitted to abandon that Court and burden this Court with a determination of the same questions.

Tenth.

Respondents state that while said bill in Alabama prays a full accounting in Alabama for the rents and profits received, it was expected that the respondents would claim credit for the amount paid in under the accounting had in Georgia; and said complainants never intended and do not intend to question the right to all proper credits.

They further state that said suit is instituted in good faith, and without any intention to evade the jurisdiction of this Court, or from any disrespect of its orders or decrees. They deny that said suit was instituted for the purpose of harassing or annoying any one, or for the purpose of unnecessarily prolonging the litigation.

Wherefore, these respondents pray that the rule against them be discharged, and that this Court issue no other or further order or

injunction in this cause, but that it dismiss said bill for want of jurisdiction of the persons and subject matter of said proceedings.

And these respondents pray to be discharged with their reasonable costs in this behalf.

KING & SPALDING,
J. M. CHILTON,
WELLES, BENNETT & WELLES,
Solicitors for Respondents.

STATE OF ALABAMA,
City and County of Montgomery.

Before me G. F. Mertins, an acting Notary Public in and for said County, this day appeared John M. Chilton and Frank L. Welles—the latter a member of the law firm of Welles, Bennett & Welles, each of whom being by me duly sworn on oath says that each is a solicitor for the respondents in this proceeding and is also a defendant thereto. That the statements of fact made in the foregoing answer are true except when the same appear to be made as upon information and belief and that when so made each verily believes the same to be true.

JOHN M. CHILTON,
FRANK L. WELLES.

Sworn to and subscribed before me this 12th day of June, 1901.

G. F. MERTINS,
Notary Public, Montgomery Co., Ala.

[SEAL.]

STATE OF GEORGIA,
Troup County.

I, J. H. Nolan, an acting Justice of the Peace in and for said County do hereby certify that before me on this day appeared William H. Huguley and W. T. Huguley each of whom being duly sworn on oath says that the statements of the foregoing bill are true except when they appear therein to have been made on information and belief and when so made that they verily believe the same to be true. Said W. H. Huguley further states that he was the last acting president of the Alabama & Georgia Manufacturing Company and as such makes this affidavit. And said W. T. Huguley further states that he is the Agent of the Huguley Manufacturing Company in the conduct of these proceedings. That the president of said company resides in the State of Missouri and is inaccessible at the time and place where the foregoing answers were drawn and where this affidavit was made.

W. H. HUGULEY,
President The Alabama & Georgia Manufacturing Company.
WM. T. HUGULEY,
Agent The Huguley Manufacturing Company.

Sworn to and subscribed before me, this 13th day of June, 1901.

J. H. NOLAN,
Justice of the Peace,
701st Dist. G. M. Troup County Georgia.

[SEAL.]

Exhibit "A."

In the Chancery Court of Chambers County, Alabama.

THE HUGULEY MANUFACTURING COMPANY, and others,
vs.
THE WEST POINT MANUFACTURING COMPANY, and others.

The Joint and Separate Answer, Demurrer, Pleas, and Motion of the Galeton Cotton Mills, Riverdale Cotton Mills, and West Point Manufacturing Company, respondents to the original Bill of Complaint in the above stated cause.

Come the respondents, the Galeton Cotton Mills, Riverdale Cotton Mills, and West Point Manufacturing Company, and now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can be had or taken by demurrer, motion to dismiss, or otherwise, to the many errors, uncertainties and other imperfections in said complainant's said bill of complaint contained, and for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material and necessary for them to make answer thereunto, these respondents jointly and separately answering say:

1. Answering the first paragraph of the bill of complaint, they deny, on information and belief, that either The Alabama and Georgia Manufacturing Company, or the Huguley Manufacturing Company, was ever a corporation under the laws of the State of Alabama, or that either of them is now a corporation under the laws of the State of Alabama; but, if respondents are mistaken in this, then they aver that each of said corporations was also organized under the laws of the State of Georgia, and that the officers, directors and stockholders of the said The Alabama and Georgia Manufacturing Company as organized under the laws of the State of Alabama, if it were ever so organized, were and so far as it now has any, are the same as the officers, directors and stockholders of the said The Alabama and Georgia Manufacturing Company as organized under the laws of the State of Georgia, and that the officers, directors and stockholders of the said Huguley Manufacturing Company as organized under the laws of the State of Alabama, if it were ever so organized, were, and so far as it now has any, are the same as the officers, directors and stockholders of the said Huguley Manufacturing Company as organized under the laws of the State of Georgia; and respondents aver that as long as either of said corporations had any property, said property was situated partly in Georgia and partly in Alabama, and consisted of a manufacturing plant, which was indivisible, and which was operated as one business from the offices of each of said companies at West Point, in the State of Georgia; and said two companies owned no other property than the property which each of them owned as organized under the laws of the State of Georgia, which property is set out and described in the first paragraph of said bill,

and certain other personal property operated in connection with said plant. Respondents deny that Exhibit "A" attached to said bill of complaint is a true and correct copy of the charter granted by the General Assembly of Alabama to the said The Alabama and Georgia Manufacturing Company, and call for proof of same; and these respondents deny that the said The Georgia and Alabama Manufacturing Company as organized under the laws of the State of Alabama alone is or was ever seized or possessed of the lands and other property described in said paragraph, but aver that said The Alabama and Georgia Manufacturing Company as organized under the laws of the State of Georgia was seized and possessed of all of said lands and property.

2. Answering the second paragraph of said bill of complaint, these respondents say: They admit that the said The Alabama and Georgia Manufacturing Company did execute to the said Robinson, Yancey and Huguley as Trustees for the bondholders a mortgage and one hundred and twenty bonds in the amount in the second paragraph of said bill referred to and mentioned; and they aver that the terms of said mortgage are shown by the copy thereof attached hereto as Exhibit "A" and made a part hereof, to which reference is made for greater certainty as to its provisions; and they further aver that said mortgage was executed by the said The Alabama and Georgia Manufacturing Company as organized under the laws of the State of Georgia, and was executed at their said office in the city of West Point, in the State of Georgia, and was there delivered, and respondents deny that said Huguley Mfg. Co. constructed any part of said cotton manufacturing plant.

3. Answering the third paragraph of said bill of complaint, these respondents say: They admit that said Yancey is now dead, and they aver that he died prior to January, 1891. They deny the averment that no steps have been taken by the said Trustee Robinson to subject the lands situated in Alabama to the payment of the said mortgage. They admit that no steps have been taken by the said Huguley, Trustee, to subject the said property situated in Alabama to the payment of said mortgage, but the reason why said Huguley, Trustee, has not taken such steps and the steps which have been taken by said Robinson, will appear in the further answer of these respondents.

4. Answering the fourth paragraph of said bill of complaint, these respondents say: They admit that in January, 1891, J. J. Robinson, one of the trustees under said mortgage, whose residence is correctly stated in said fourth paragraph, did without the concert and co-operation with said W. T. Huguley, surviving trustee, file a bill in the Circuit Court of the United States for the Northern District of Georgia for a foreclosure of said mortgage. They deny that said bill so filed by said Robinson, Trustee, prayed for the foreclosure of only a portion of said bonds, and they aver that said bill filed by said Robinson, Trustee, prays for the foreclosure of said mortgage for the benefit of all the said bondholders secured

thereby and that in the course of said cause in said court all of said bondholders were represented and participated therein. They further aver that prior to the filing of said bill by said Robinson, Trustee, to-wit: in 1888, the equity of redemption of said The Alabama and Georgia Manufacturing Company in the property conveyed by said mortgage had by certain judicial proceedings conducted in the Superior Court of Troup County, Georgia, become the property of the Huguley Manufacturing Company, one of the complainants in this cause, and that said Trustee W. T. Huguley was interested in said Huguley Manufacturing Company and adversely interested to the bondholders claiming under said mortgage in which he was named as co-Trustee prior to and at the time of the filing of said bill by said Robinson, Trustee, in the said Circuit Court of the United States for the Northern District of Georgia. They further aver that in the said bill filed by the said Robinson, Trustee, said fact as to the interest of said W. T. Huguley, Trustee, was alleged and set forth, and to said bill filed by said Robinson, Trustee, said W. T. Huguley, and the Huguley Manufacturing Company, and The Alabama and Georgia Manufacturing Company who are the complainants in this cause, were parties defendant; and that subsequently in said suit instituted by said Robinson, Trustee, said W. T. Huguley admitted the fact of his interest in said Huguley Manufacturing Company.

They further aver that the larger part both of the real and of the personal property described in the first paragraph of the bill of complaint filed in this cause was at the time of the filing of said bill by said Robinson, trustee, and is still situated in said Northern District of Georgia, and respondents are advised, and upon such advice aver that upon the facts as they appear by said bill filed by said Robinson, trustee, and as they appear by this answer, said Circuit Court of the United States for the Northern District of Georgia acquired jurisdiction of the said bill filed by the said Robinson, Trustee, and of all of the parties interested in said property, including both complainants in this cause, and of all said property situated in both the States of Alabama and Georgia.

They admit that in the said bill filed by the said Robinson, Trustee, the said The Alabama and Georgia Manufacturing Company was referred to as a corporation organized under the laws of Georgia, and they aver that the said corporation The Alabama and Georgia Manufacturing Company, made defendant to said bill filed by Robinson, Trustee, was the same identical The Alabama and Georgia Manufacturing Company which is a complainant in this suit, and that its place of business was at West Point in said Northern District of Georgia, and it was a resident and citizen of said Northern District of Georgia at the time of the filing of said bill by said Robinson, Trustee, and it never had any place of business in the State of Alabama.

They further aver that said Alabama and Georgia Manufacturing Company appeared in said case filed by said Robinson, Trustee, as

aforesaid, and defended the same, and that service of process in said suit was duly and regularly made upon W. H. Huguley, president thereof at the time of such service for said The Alabama and Georgia Manufacturing Company. They admit that besides The Alabama and Georgia Manufacturing Company said co-Trustee Huguley and the Huguley Manufacturing Company were the only defendants to said bill; and they aver that said Huguley, Trustee, and said Huguley Manufacturing Company were each duly and regularly served with process, and each appeared in said suit filed by said Robinson as Trustee. They deny the averment that no attempt was made to subject that part of the said property lying in the State of Alabama, and they aver that in said bill filed by said Robinson, Trustee, all of said property, whether in Georgia or in Alabama, was sought to be so subjected to said mortgage. They deny that any part of said lands shown by the description of said lands as set out in the first paragraph of the bill of complaint in this cause was or is situated in the State of Alabama and they deny that any part of the same was erroneously described as being in Georgia. They admit that the said sale of said mortgaged lands did not take place in Alabama, but they are not informed whether any advertisement of said sale was made in the State of Alabama, and they aver that both by the terms of said mortgage and of the decrees of sale hereinafter described said property was to be sold and the sale of the same advertised in the state of Georgia, and there was no provision that such sale or advertisement thereof should be made in Alabama. They deny the averment contained in the bill of complaint in this cause, that said W. H. Huguley, as president of the said Alabama and Georgia Manufacturing Company was never served with notice of said suit filed by said Robinson, Trustee, and was never notified of said default; and they aver that in said suit filed by said Robinson, trustee, it was averred that there was default in said mortgage and notice thereof given in accordance with its terms.

Further answering the fourth paragraph of said bill these respondents say that under the proceedings had in the said suit instituted by the said Robinson, Trustee, all of said lands were by order of said Circuit Court of the United States, properly and legally sold, including the part of said lands which are situated in the State of Alabama. They admit that the purchasers of said lands at the said sale went into possession thereof. They admit that the purchasers of said property in 1892 were Lanier, Dallis, and Kirby, representing the bondholders secured by said mortgage, and that they conveyed or cause to be conveyed said property to said Galeton Cotton Mills when said corporation was organized. They admit that said Galeton Cotton Mills remained in possession of said property until the 6th day of May, 1896, and they aver that the decree of sale of said property rendered in said Circuit Court of the United States, having been by said court set aside, the purchasers at said sale were by order of said Circuit Court of the United States for the Northern District of Georgia, upon motion of said Huguley

Manufacturing Company made in said suit by said Robinson, Trustee, required to account, and did fully account to said Huguley Manufacturing Company for all rents and profits of said lands during their possession, and up to the — day of March, 1896, and a portion of said rents and profits so accounted for was paid in cash to and is still retained by said Huguley Mfg. Co. They admit that the first decree of foreclosure of said mortgage rendered by said Circuit Court of the United States for the Northern District of Georgia in said suit filed by said Robinson, Trustee, was reversed by the United States Circuit Court of Appeals for the Fifth Circuit, and that another decree of foreclosure was rendered in said Circuit Court of the United States for the Northern District of Georgia in said cause instituted by said Robinson, Trustee, and that at a sale under said last mentioned decree had on the 6th day of May, 1896, said Lanier did purchase said property as Trustee for the bondholders secured by said mortgage ; and they admit that said sale took place in Harris County, Georgia. They aver that said sale was in all respects regular and in pursuance of the said decree of the Circuit Court of the United States for the Northern District of Georgia, and was in said cause on the 25th day of June, 1896, duly and regularly confirmed by said last mentioned court, and was again confirmed by order of said last mentioned court in said cause on or about the 5th day of October, 1898.

Further answering these defendants aver that through the purchase by said Lanier, the Riverdale Cotton Mills, respondent in this cause, acquired title to all of the lands of the Alabama and Georgia Manufacturing Company free from all claims of said Huguley Manufacturing Company, and that since the 5th day of October, 1898, said property and plant have been operated in the name of the Riverdale Cotton Mills. They aver that after the reversal of the said first decree of sale by the United States Circuit Court of Appeals for the Fifth Circuit, and after the Galeton Cotton Mills had accounted to the Huguley Manufacturing Company as above set forth, said L. Lanier, as Trustee, for the bondholders secured by said mortgage, went into possession of said property and continued in possession until the conveyance to the Riverdale Cotton Mills, as hereinabove set forth.

Further answering said fourth paragraph, these respondents say: That after the rendition of said second decree of sale for the foreclosure of said mortgage, which decree was rendered on or about the 10th day of March, 1896, the Huguley Manufacturing Company and The Alabama and Georgia Manufacturing Company, appealed said cause instituted by said Robinson, Trustee, to the United States Circuit Court of Appeals for the Fifth Circuit, and in the last named court said decree of the Circuit Court of the U. S. for the Northern District of Georgia was in all things affirmed. That subsequently and in the year 1898, other proceedings were had in said Circuit Court of the U. S. for the Northern District of Georgia in said suit instituted by Robinson, Trustee, and after said proceedings last

mentioned said Huguley Manufacturing Company and said Alabama and Georgia Manufacturing Company, for the third time appealed to the said U. S. Circuit Court of Appeals for the Fifth Circuit, which said last mentioned court affirmed the said last mentioned decree from which said last appeal was taken on or about the 16th day of May, 1899. Respondents further aver that said decree of affirmance last rendered by the said U. S. Circuit Court of Appeals for the Fifth Circuit remains unreversed and in full force and effect. They admit that after the last affirmance mentioned above in said suit instituted by said Robinson, Trustee, by the U. S. Circuit Court of Appeals for the Fifth Circuit, said Huguley Manufacturing Company and said The Alabama and Georgia Manufacturing Company heretofore, to-wit: before the first day of June, 1900, sued out an appeal in said cause to the Supreme Court of the U. S., but these respondents aver that said Huguley Manufacturing Company and said The Alabama and Georgia Manufacturing Company have never bona fide prosecuted said appeal, and have never superseded said decree of affirmance.

Further answering said fourth paragraph, these respondents say: They deny that the West Point Manufacturing Company is or was a stockholder in said Galeton Cotton Mills or said Riverdale Cotton Mills, and they deny that the said West Point Manufacturing Company has ever received any of the rents and profits of the said company, and they deny that the officers, directors and stockholders of the Galeton Cotton Mills, Riverdale Cotton Mills, and West Point Mfg. Co., were the same, or that the Galeton Cotton Mills and the Riverdale Cotton Mills were "dummy" corporations, and deny that the West Point Manufacturing Company was or is the owner of the assets of said Galeton Cotton Mills or of said Riverdale Cotton Mills and they deny that the West Point Manufacturing Company ever exercised and controlled all or any of the corporate franchises and functions of either of the said two corporations, the Galeton Cotton Mills and the Riverdale Cotton Mills. They deny that the West Point Manufacturing Company had anything to do with the organization of the Galeton Cotton Mills or the Riverdale Cotton Mills. Further answering said fourth paragraph, these respondents say: They deny that the rents and profits arising from the portion of said mortgaged property from the 6th November, 1892, to the 6th May, 1896, amounted to the sum mentioned in said paragraph, and they aver that said rents did not exceed $40,000, and they again aver that all of the rents and profits of the said property between the dates mentioned were accounted for by the purchasers of said property under the sale of said property made in 1892 to said Huguley Manufacturing Company, on motion of said Huguley Manufacturing Company, and upon order of said Circuit Court of the U. S. for the Northern District of Georgia, made in 1896, in said suit filed by said Robinson, Trustee, and that the same were accepted and are still retained by said Huguley Mfg. Co.

They further aver that said Huguley Manufacturing Company

has ever accounted for or returned or offered to account for or return to any of these respondents or to any one else said rents and profits or any of them so accounted for to said Huguley Manufacturing Company by said Galeton Cotton Mills. They deny that the rents and profits of said property since the 6th day of May, 1896, have amounted to the sum stated in said paragraph, and aver that the amount of said rents and profits was a sum much smaller, to-wit: not more than $40,000; and respondents aver that the amount of said rents and profits since said date in 1896 is immaterial, for that in 1896 by order and decree of said Circuit Court of the United States for the Northern District of Georgia, all of the rights of each of the complainants to this bill to said mortgaged property and its rents and profits were ended by the sale of said mortgaged property, as hereinabove set forth. They deny that any damage or waste has been committed on or in respect to said property during the possession of the said Galeton Cotton Mills, or said Lanier or said Riverdale Cotton Mills, but on the contrary they aver that the purchasers of said property have placed thereon permanent improvements of a large value, to-wit: of the value of $200,000.00 or other large sum.

5. For answer to the fifth paragraph of the bill in this cause, these respondents say: They admit that on the face of said judicial proceedings instituted by the said Robinson, Trustee, in the suit instituted by the said Robinson, Trustee, in the Circuit Court of the United States for the Northern District of Georgia, it was shown that part of said mortgaged property was situated in the State of Alabama, and they are advised by counsel, and on such advice aver, that said Circuit Court of the U. S. for the Northern District of Ga. acquired jurisdiction of all of said mortgaged property situated in Alabama and in Georgia upon the filing of said bill by said Robinson, Trustee, because of the facts in this answer hereinabove averred and set forth as to the location and character of said property, and the jurisdiction obtained by said court in said cause of the defendants therein; and respondents aver that the title to all of said property, as well that part situated in Alabama as that part situated in Georgia, passed to the said Riverdale Cotton Mills under said proceedings had in said Circuit Court of the U. S. They deny that all of said land is situated in Alabama, and aver that only that part of said land is situated in the State of Alabama which is shown to be so situated by the description of said land given in the first paragraph of the bill of complaint in this cause. These respondents deny each and every other allegation contained in said fifth paragraph of said bill not herein expressly admitted.

6. For answer to the 6th paragraph of said bill these respondents say: They deny that said proceedings in said Circuit Court of the U. S. for the Northern District of Georgia in said suit instituted by said Robinson, Trustee, were null or void, and deny that all of said lands are situated in the State of Alabama, and they aver that said property is situated partly in Alabama and partly in Georgia as shown by description thereof contained in the first para-

graph of the bill of complaint in this cause, and that said property was and is indivisible and consists of one plant operated together and is indivisible and that by the filing of said bill by the said Robinson Trustee in the Circuit Court of the U. S. for the Northern District of Georgia, and by the service of process upon the defendants thereto, the said last mentioned court acquired jurisdiction of the said persons and of all of said property, and that all of said proceedings in said suit filed by said Robinson, Trustee, were valid, and by said proceedings, said Riverdale Cotton Mills secured an indefeasible title to all of said lands and property conveyed by said mortgage.

7. For answer to the seventh paragraph of said bill these respondents say: They admit that the said bonds were the property of said bondholders secured by said mortgage, and that said bonds were used to a large extent in the purchase of said property at said sales made under authority of said Circuit Court of the U. S., but respondents aver that the Riverdale Cotton Mills have fully paid to L. Lanier Trustee for the bondholders the full amount of the purchase price of said property.

Further answering said paragraph these respondents admit that the Huguley Manufacturing Company became the purchaser and acquired the property of said The Alabama and Georgia Manufacturing Company subject to said mortgage executed to said Robinson and others Trustees, but they aver that the same occurred in the following manner, to-wit: and not otherwise: That subsequent to the execution and delivery by the said The Alabama and Georgia Manufacturing Company of the mortgage of said Robinson and others trustees as hereinabove described and set forth, said Huguley Manufacturing Company by proceedings had in the Superior Court of Troup County, Ga., and not otherwise, purchased, under a decree rendered in said last mentioned court and not otherwise, all the property of said The Alabama and Georgia Manufacturing Company contained in said mortgage, that the same was sold as an entirety and at said sale said W. H. Huguley associates became the purchaser of all of said property subject to said mortgage executed to said Robinson and others, Trustees, and by the terms of said decree of sale made by said Superior Court of Troup County, Ga., said sale was made subject to said mortgage made to said Robinson and others trustees as aforesaid, that said sale was made and advertised in Georgia and neither made nor advertised in Georgia, nor has said Huguley Mfg. Co. ever acquired any title or claim to the same by proceedings in Alabama. Respondents further aver that all of the proceedings by which said Huguley Manufacturing Company acquired whatever interest it has or had in the property of said The Alabama and Georgia Manufacturing Company by reason of said sale under decree of said Superior Court of Troup County, Ga., were fully set forth in the proceedings had in the suit insituted by said Robinson, Trustee, in said Circuit Court of the U. S. for the Northern District

of Ga., and the rights of complainants in this cause, and the rights of all of the parties to the suit instituted by said Robinson, Trustee, were therein fully adjudicated and determined.

Further answering said seventh paragraph, these repondents admit on information the allegations as to citizenship, residence, and age of the defendants Robinson and Huguley.

8. These respondents further answering said bill, deny each and every allegation contained therein which has not been expressly admitted herein.

9. For Joint and Separate Plea as well as further answer to said bill of complaint, these respondents say: That by reason of the proceedings had in the U. S. Circuit Court of the Northern District of Georgia, in said cause, wherein J. J. Robinson, Trustee was complainant and said The Alabama and Georgia Manufacturing Company et als. were respondents, as hereinabove described and set forth, and the averments herein as to which are hereby referred to and made part of this plea, all matters and things by complainants in the bill of complaint in this cause sought to be litigated, have been litigated, adjudicated and determined by a competent court, to-wit, the Circuit Court of the U. S. for the Northern District of Georgia, which had jurisdiction of the subject matter involved in this suit, and jurisdiction of the parties to said suit in said cause in which said J. J. Robinson as Trustee was complainant and jurisdiction of both the complainants in this cause and of said trustees under said mortgage foreclosed in said cause from and through whom the respondent Riverdale Cotton Mills acquired their interest in and title to said property as hereinabove set forth and described. That said proceedings in said U. S. Circuit Court for the Northern District of Georgia remain in full force and effect and are unreversed, whereby these respondents aver that the matters and things sought to be litigated and determined in this cause have been fully adjudicated and determined adversely to the complainants in this cause, and they should not be further allowed to maintain this suit.

10. For further answer to said bill of complaint and by way of plea thereto, these respondents say that they are informed and believe and upon such information and belief charge and state, that the said The Alabama and Georgia Manufacturing Company has never authorized or consented to, either as a corporation under the laws of Alabama or as a corporation under the laws of Georgia, the institution and prosecution of this suit, and the same is now sought to be prosecuted and maintained without the knowledge, authority or consent of said The Ala. & Ga. Mfg. Co.

11. For additional plea and answer in this behalf these respondents say that by section 1273 of the Code of Ala. of 1896, it is provided that the non-user of corporate franchises for a period of five consecutive years is a forfeiture of such franchise, and respondents aver that the said The Alabama and Georgia Manufacturing Company has not used its corporate franchises or any of them or

prosecuted any of its business within the State of Alabama for more than five consecutive years before the filing of the said bill in this cause, to-wit: since 1889, and if the said The Alabama and Georgia Manufacturing Company was ever incorporated in the state of Alabama, which respondents do not admit, said The Alabama and Georgia Manufacturing Company has by the non-user of said franchises and by the failure to prosecute any of its business in this State for more than five years before the filing of the bill of complaint in this cause, forfeited all of its said franchises, and under sec. 1300 of the Code of 1896, the said The Alabama and Georgia Manufacturing Company has no right to prosecute this suit.

12. For additional plea and answer in this behalf, these respondents say that by section 1273 of Code of Alabama of 1896, it is provided that the non-user of corporate franchises for a period of five consecutive years is a forfeiture of such franchise, and respondents aver that the said Huguely Manufacturing Company has not used its corporate franchises or prosecuted any of its business within the State of Alabama for more than five consecutive years before the filing of the said bill in this cause, to-wit: since 1889, and if the said Huguley Manufacturing Company was ever incorporated in the State of Alabama, which respondents do not admit, said Huguley Manufacturing Company has by the non-user of said franchises or any of them and by the failure to prosecute any of its business in this State for more than five years before the filing of this bill of complaint in this cause, forfeited all of its said franchises, and under sec. 1300 of the Code of 1896 the said Huguley Mfg. Co. has no right to prosecute this suit.

Now, having fully answered said bill of complaint, these respondents jointly and severally demur thereto and as grounds of demurrer jointly and severally assign the following:

1. There is no equity in said bill.

2. There is a misjoinder of parties complainant.

3. It is shown in and by said bill that complainant The Alabama and Georgia Manufacturing Company conveyed by mortgage said property to said Robinson and others Trustees, and that subsequent thereto the equity of redemption of The Alabama and Georgia Manufacturing Company in said property became and is now the property of said Huguley Manufacturing Company.

4. It appears in and by said bill that The Alabama and Georgia Mfg. Co. has now no interest in the property conveyed by mortgage to the said Robinson and others trustees and has no equity of redemption in said property.

5. It is shown in and by said bill that complainants have a full, complete and adequate remedy at law as to any of said property which is situated in the State of Alabama.

6. It is shown in and by said bill that complainants have a full, complete and adequate remedy at law.

7. It is shown in and by said bill that if at the time of the proceedings in the Circuit Court of the U. S. for the Northern District

of Ga. any of said property was situated in the State of Georgia, neither of the complainants now has any equity or right of redemption as to or in said property.

8. It is shown in and by said bill that complainant The Alabama and Georgia Mfg. Co. conveyed by mortgage said property to said Robinson and others trustees, and that subsequent thereto the equity of redemption of said The Alabama and Georgia Mfg. Co. therein became the property of said Huguley Mfg. Co., and it further appears in said bill that said mortgage to said Robinson and others trustees has been foreclosed.

9. Complainants in said bill show that they have at most a statutory right of redemption in and to said *property*, and they do not bring themselves within the statutes of the State of Alabama for and redemption in such cases made and provided.

10. There is a misjoinder of parties complainant, for that complainants seek in and by said bill to enforce distinct and different rights.

11. It is shown in and by said bill of complaint that the matters and things sought to be litigated and determined in this cause have been adjudicated adversely to complainants in a cause to which they were parties and to which the persons with whom these respondents stand in privity, were parties in a court which had jurisdiction of the subject-matter and of the parties complainant in this cause and the said adjudication remains unreversed and in full force and effect.

12. It appears in and by said bill of complaint that another court of competent jurisdiction has jurisdiction acquired prior to the filing of the bill in this cause, of all matters and things sought to be litigated herein.

13. It appears in and by said bill of complaint that complainants have been guilty of *laches*.

14. It appears in and by said bill of complaint that complainants are guilty of *laches* in that they have permitted all of said proceedings in said cause wherein said Robinson as trustee was complainant to be adjudicated without therein raising or seeking to raise the question of boundary between Georgia and Alabama, or by seeking to raise the question of the jurisdiction of the Circuit Court of the U. S. for the Northern District of Ga. to foreclose said mortgage to Robinson and others trustees.

15. For aught that appears in said bill said Ala. & Ga. Mfg. Co. was and is a corporation under the laws both of the States of Georgia and Alabama.

16. For aught that appears in said bill said Huguley Mfg. Co. was and is a corporation under the laws of both the States of Georgia and Alabama.

17. For aught that appears in said bill said Ala. & Ga. Mfg. Co. and said Huguley Mfg. Co. were and are corporations under the laws both of the States of Georgia and Alabama.

18. It is sought in and by said bill of complaint collaterally to

attack and impeach a decree of another court of competent jurisdiction rendered in a cause to which complainants were parties, and no fraud or other ground of attack thereon is offered or set forth in said bill.

19. For aught that appears in said bill of complaint said Huguley Mfg. Co. never purchased or attempted to purchase any more than a statutory right of redemption in the property described in the bill of complaint.

20. It does not appear from said bill whether said Huguley Mfg. Co. acquired the property of the Ala. & Ga. Mfg. Co. before or after the sale of said property through said Circuit Court of the U. S. for the Northern District of Georgia, as set forth in said bill.

21. It is averred as a conclusion of law that said Huguley Mfg. Co. purchased and acquired the property described in said bill and is now the owner of same, and no facts are averred or shown in support thereof.

And these respondents jointly and separately move to dismiss said bill of complaint for that there is no equity therein.

____ ____,

Solicitors for Respondents named.

Exhibit "A."

(This is copied in full as Exhibit "A" to the bill. It is the resolutions adopted at a meeting of the board of directors of the Alabama & Georgia Manufacturing Company in West Point, Ga., on the 17th day of October, 1883.)

Exhibit "B."

(Same as Exhibit "A" above.)

Exhibit "C."

No. 160.

An Act to Incorporate the Alabama and Georgia Manufacturing Company.

Sec. I. Be it enacted, by the Senate and House of Representatives of the State of Georgia, in General Assembly met, That James Metcalf, George Huguley, Benjamin H. Hill, William P. Chilton, and Geo. W. Huguley, together with such other persons as may hereafter be associated with them and their successors, be, and they are hereby made and constituted a body corporate in fact and in name, under the name, style, and title of the Alabama and Georgia Manufacturing Company, and by that name shall be, and are hereby made able and capable at law, to have, hold, receive, purchase, possess and enjoy, to them and their successors, all real and personal estate, of whatever kind or amount said corporation may deem necessary to carry all the objects of said corporation into full force and

effect, and may sell, grant, convey, or otherwise dispose of the same, and may sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all Courts having competent jurisdiction; to make, use, and have a common seal, and the same to alter, break, and renew at pleasure, and to do all other acts incident to a body corporate and politic.

Sec. II. That the objects of said corporation shall be manufacture of wool and cotton into thread and cloth, the manufacture of meal, flour, lumber, shingles, boards, and machinery of any description, or such branches or parts thereof as they see proper to engage in. And to enable the said persons named in the first section of this charter to carry out the purposes of this charter, they and their successors, and associates, may control and use the water of the Chattahoochee river, so far as the riparian rights of this State are concerned, by locks, dams, canals, or otherwise, for manufacturing purposes generally; *provided*, that nothing in this act shall be so construed as to give said corporators, or their successors, the privilege to interfere with, or disturb the vested rights of any person or persons whomsoever, either on the east or west bank, or islands in, the Chattahoochee river, and that said dams, locks, and canals, shall not extend more than half way across said river, from the west side, and to secure their property against loss by fire, or other injuries, may prevent persons from building fires, or camping, within two hundred yards of the factory buildings.

Sec. III. That said body corporate shall have power to prescribe the number of shares into which the capital stock of said corporation shall be divided, the mode in which it shall be taken, paid, transferred, or assigned, and also to provide the mode by which stockholders may vote, and the number of votes to which each share shall be entitled; that the rules adopted shall be uniform, equally securing the rights of each stockholder, and also to provide for the election of such officers as may be deemed necessary for the government, and management, of the affairs of the corporation; to ordain, establish, and put in execution, such by-laws, ordinances, and resolutions, as they shall deem necessary and expedient for the government of said corporation, not inconsistent with the Constitution and laws of the State of Georgia, or of the United States, and in general to do and execute all and singular the acts, matters, and things, which may be deemed necessary for manufacturing.

Sec. IV. That said corporation shall not exercise banking privileges, but is authorized to carry the foregoing granted powers into execution, according to the true intent and meaning thereof.

Sec. V. That said corporation shall have power to borrow money on mortgage, or other security, and to loan out its surplus earnings on similar security, or mortgage, and to ordain such rules and regulations with respect to stockholders who refuse to pay up any balance on their stock, as will compel them to pay upon penalty of forfeiting such stock to said corporation; *provided*, that no stockholder shall be liable beyond the amount of his, her, or their stock.

Sec. VI. That said corporation shall have the right and privilege to build, erect, make and preserve all dams, locks, canals, abutments, or other needful structures half-way across said Chattahoochee river, as may be necessary to give them the greatest amount of water power, and to use for that purpose the islands contiguous to their lands for abutments and dams, and to erect all needful buildings on the east side of the river, and to carry on any of the business and manufactures, or any branch, or branches, of the same, in this State, that said charter authorizes them to engage in, or carry on in the State of Alabama, and generally to do all acts coming within the legitimate scope of their business and objects aforesaid, which usually belong to bodies corporate and politic.

Sec. VII. That the private property of the stockholders shall be liable for the debts of said corporation, to the amount of their subscribed stock not paid in at the time any suit may be commenced.

Sec. VIII. That the capital stock of said Company shall be fifty thousand dollars, with permission to increase the same to one million of dollars, which stock shall be divided into shares of one hundred dollars each.

Sec. IX. That nothing in this act shall be so construed as to prevent the Legislature from taxing the property of said Company as other property in this State.

Sec. X. That said corporation shall not organize and commence business until the capital stock shall have been subscribed, and ten per cent of the same paid in.

Sec. XI. That the place of business of said corporation shall be Columbus, Georgia, or LaGrange, Georgia.

Approved 21st March, 1866.

Exhibit "D."

(Alabama Charter.)

The Huguley Manufacturing Company. Declaration.

Book of Corporations—A., pp. 35-42.

Be it known: That the undersigned, W. T. Huguley, Thomas H. Whitaker, and John M. Chilton, desiring to form a corporation, do hereby made this their declaration:

First. Said W. T. Huguley is a resident of West Point, in the State of Georgia; Thomas H. Whitaker is a resident of the town of LaGrange, in the same state; John M. Chilton is a resident of the City of Opelika, State of Alabama.

Second. The name and style of the proposed corporation shall be "The Huguley Manufacturing Company."

Third. The amount of the capital stock shall be Ten Thousand Dollars, to be divided into one hundred shares of one hundred dollars each.

Fourth. The general purposes of the corporation is the manufacture of yarns and cloth from cotton or wool; the grinding of grain, the operating of a general store for the benefit of its opera-

tives; and generally, the purpose is to do and perform all such acts as are incident to such corporations, and said corporations shall have all the powers conferred upon such corporations by Chapter 2, of Part 1; of Title 1, of the Code of Alabama of 1876.

Fifth. The principal place of business shall be at Elliott's Store, in Chambers County, Alabama, near the Factory, lately known as the "Alabama and Georgia Mills."

THOS. H. WHITAKER,
W. T. HUGULEY,
JOHN M. CHILTON.

Filed in Office, Feb'y 27, 1890, and W. T. Huguley, Thomas H. Whitaker, and John M. Chilton, appointed Commissioners.

J. J. ROBINSON,
Judge of Probate.

Commission.

STATE OF ALABAMA, }
Chambers County. }

To W. T. Huguley, Thos. H. Whitaker, and John M. Chilton:

Whereas, you have this day filed in the office of the Judge of Probate of Chambers County, your declaration in writing, praying to be formed into a corporation under the name and style of—

"The Huguley Manufacturing Company,"

complying in said declaration with Section 1568, of the Code of Alabama;

You are hereby authorized, as Commissioners, to open books of subscription to the capital stock of said proposed corporation, at such time and place, and upon such notice as you may appoint.

J. J. ROBINSON,
Judge of Probate, Chambers County, Ala.

Issued this 27th Feb'y, 1890.

J. J. ROBINSON,
Judge of Probate.

Organization.

In the matter of "The Huguley Manufacturing Company."

Organization Proceedings.

BLUFFTON,
CHAMBERS COUNTY, ALA.,
Feb'y 27, 1890.

This being the day and hour fixed by the call of the Commissioners, appointed by Hon. J. J. Robinson, Judge of Probate of said County, to act in the premises: and all of the subscribers to the capitol stock of "The Huguley Manufacturing Company" having had personal notice of the time and place of this meeting, and all being present, that is to say, W. H. Huguley & Co. (by W. T. Huguley and J. H. Nolan, partners in said firm), subscribers to

ninety-two (92) shares; John T. Higgenbotham, subscriber to four (4) shares; Thos. H. Whitaker, subscriber to two (2) shares,—said subscribers proceeded to the further organization of said corporation.

Said subscribers thereupon elected the following board of Directors from among the subscribers: W. H. Huguley, W. T. Huguley, J. H. Nolan, J. M. Chilton, and Thos. H. Whitaker. Said board to hold office for a term of twelve months from this date. Said board also elected the following officers, to wit:

President, W. T. Huguley;
Vice-President, Wm. H. Huguley;
Treasurer, W. H. Huguley & Co.,
Secretary, Harrell D. Huguley.
Said officers to hold twelve months from date.

On motion, W. T. Huguley was elected the officer of the corporation to whom the subscriptions to the capital stock should be turned over by the Commissioners.

J. M. CHILTON; T. H. WHITAKER;
J. T. HIGGENBOTHEM;
W. H. HUGULEY & CO.

Filed in office, Feb'y 28, 1890.

J. J. ROBINSON, *Judge Probate.*

Report of Organization.

STATE OF ALABAMA, }
Chambers County. }

To Hon. J. J. Robinson, Judge of Probate of said County:

The undersigned, W. T. Huguley, who has been elected and designated by the Board of Directors of "The Huguley Manufacturing Company," its officer to receive from the Commissioners, heretofore appointed by your Honor, the subscriptions by them received to the capital stock of said corporation, does hereby certify that he has received from said Commissioners the following subscriptions in writing:

STATE OF ALABAMA, }
Chambers County. }

Books of subscription to the capital stock of The Huguley Manufacturing Company having this day been opened by W. T. Huguley, Thos. H. Whitaker, and John M. Chilton, Commissioners appointed for the purpose by Hon. J. J. Robinson, Judge of Probate of said County, (Chambers), we, the undersigned, do hereby subscribe to the number of shares and amounts set opposite our respective names, to-wit:

Thos. H. Whitaker,	2	Shares	..... $200.00;
Jno. T. Higgenbothem,	4	"	..... 400.00;
John M. Chilton,	2	"	..... 200.00;
W. H. Huguley & Co.	92	"	..... 9,200.00.

The subscription of said Whitaker, Higgenbothem, and Chilton, are made with the privilege of discharging the same by the rendition of stipulated necessary services or the performance of stipulated necessary labor; and the subscription of W. H. Huguley & Co. is made with the privilege of discharging the same by a conveyance to the corporation at its real value of real estate which the corporation has power to acquire. Said property is as follows:

Sixty-five (65) acres of land, upon which stand all the dwelling houses, superintendent's house, warehouse, shops and pickerhouse, etc., etc.

It is bounded on the North by the Chattahoochee River and John Weaver; on the West by the lands of B. T. Smith; on the South by the lands of B. T. Smith, and on the East by the Chattahoochee River.

Said W. H. Huguley & Co. agree to convey said lands to said corporation within twelve (12) months.

JOHN M. CHILTON;
W. H. HUGULEY & CO.;
THOS. H. WHITAKER;
JNO. T. HIGGENBOTHEM.

STATE OF ALABAMA, }
County of Chambers. }

Before me, George N. Croft, Justice of the Peace in and for said County, in person appeard W. T. Huguley, who, being duly sworn, deposes and says that the foregoing subscriptions contract is a true copy of the original of which it purports to be a copy. That he has received from Jno. T. Higgenbothem, J. H. Chilton, and Thos. H. Whitaker, who reserved the privilege of discharging their subscription by the rendition of specified labor for said corporation, contracts in writing, signed by them, binding each to perform stipulated services or labor for said corporation. That he has received from W. H. Huguley & Co., who reserve the right of discharging their subscriptions by the conveyance of property, their agreement in writing, signed by them, agreeing to convey to said corporation, twelve months after this date, the property described in the foregoing subscription contract.

W. T. HUGULEY.

Sworn to and subscribed before me this 27th day of Feb'y, 1890.

G. N. CROFT,
Not. Pub. & Ex-Officio Justice of Peace, Chambers Co., Alabama.

Filed in office, Feb'y 28, 1890, and Certificate of Organization issued.

J. J. ROBINSON,
Judge of Probate.

Certificate of Incorporation, Book "A", pp. 35–42.

Huguley Manufacturing Company.

Certificate of Corporation.

STATE OF ALABAMA, }
Chambers County. }

To W. H. Huguley & Co., Jno. T. Higgenbothem, John M. Chilton, and Thos. H. Whitaker:

Whereas, it appearing from papers on file in the office of the Judge of Probate, of the County of Chambers, State of Alabama, that such proceedings have been had under and in pursuance of Chapter Five, Part 2, Title 1, of the Code of Alabama, as entitled you to be and become a corporation under the name and style of

"The Huguley Manufacturing Company,"

Now, be it known that you are duly organized as a corporation under said corporate name and style; and for the purpose expressed in the declaration on file in this office, having the power, capacity and authority conferred by law.

Witness my hand, this 28th day of February, A. D. 1890.

J. J. ROBINSON,
Judge of Probate.

Filed, Feb. 28th, 1890.

Filed in Clerk's Office June 21, 1901.
O. C. FULLER, *Clerk.*

Opinion.

In the Circuit Court of the United States
For the Northern District of Georgia.

RIVERDALE COTTON MILLS, } No. 1127
vs. } In Equity.
ALABAMA & GEORGIA MANUFACTURING CO. ET AL. }

I am satisfied that under any view of this case an injunction should be granted at present to remain in force until the appeal now pending in the Supreme Court of the United States is determined. It seems to me clear that pending the appeal from the decision of this court and the Circuit Court of Appeals, the defendant should not be permitted to prosecute, nor complainant required to defend the suit instituted in Alabama. The purpose of this injunction will be to preserve the existing status pending the final determination of the case originating here.

I think there can be no doubt of the power of the court to do this on an ancillary dependent bill such as that presented in this case.

16 A. & E. Enc. of Law, p. 413.

In the case of French Trustee *v.* Hay, 22 Wall. 250, in the opinion by Mr. Justice Swayne, this language is used:

"The order of the court below, annulling the decree upon which the suit at law in Pennsylvania was founded, was fatal to that action, and entitled Hay to a perpetual injunction, without reference to the final result of the prior case.

This bill is not an original one. It is auxiliary and dependent in its character, as much so as if it were a bill of review. The court having jurisdiction in personam, had power to require the defendant to do or to refrain from doing anything beyond the limits of its territorial jurisdiction which it might have required to be done or omitted within the limits of such territory. Having the possession and jurisdiction of the case, that jurisdiction embraced everything in the case, and every question arising which could be determined in it until it reached its termination and the jurisdiction was exhausted. While the jurisdiction lasted it was exclusive and could not be trenched upon by any other tribunal. The court below might, upon a cross-bill, and perhaps, upon motion, have given the relief which was given by the interlocutory and final degree in the case before us.

If it could not be given in this case the result would have shown the existence of a great defect in our Federal jurisprudence, and have been a reproach upon the adminstration of justice. In that event the payment of the annulled decree may be enforced in Pennsylvania, and Hay, notwithstanding the final decree in that case, and in this case, would find himself in exactly the same situation he would have been if those decrees had been against him instead of being in his favor. They would be nullities as regards any protection they could have given him. Instead of terminating the strife between him and his adversary they would leave him under the necessity of engaging in a new conflict elsewhere. This would be contrary to the plainest principles of reason and justice.

The prohibition in the Judiciary Act against the granting of injunctions by the courts of the United States touching proceedings in State courts has no application here. The prior jurisdiction of the court below took the case out of the operation of that provision."

In Deitzsch *v.* Huidekoper, 103 U. S. 494, in the opinion by Mr. Justice Woods, it is said:

"A court of the United States is not prevented from enforcing its own judgments by the statute which forbids it to grant a writ of injunction to stay proceedings in a State court. Deitzsch, the original plantive in the action on the replevin bond, represented the real parties in interest, and he was a party to the action of replevin, which had been pending, and was finally determined in the United States Circuit Court. That court had jurisdiction of his person, and could enforce its judgment in the replevin suit against him, or those whom he represented, their agents and attorneys. The bill in this case was filed for that purpose and that only.

If the bill is not maintainable, then appellees would find themselves in precisely the same plight as if the judgment of the United States Circuit Court in the replevin suit had been against them, instead of for them. The judgment in their favor would settle nothing. Instead of terminating the strife between them and their adversaries, it would leave them under the necessity of engaging in a new conflict elsewhere. This would be contrary to the plainest principles of reason and justice.

As the bill in this case is filed for the purpose of giving to litigants on the law side of the court the substantial fruits of a judgment rendered in their favor, it is merely auxiliary to the suit at law, and the court has the right to enforce the judgment against the party defendant and those whom he represents, no matter how or when they may attempt to evade it or escape its effect, unless by direct proceeding. These views are sustained by the case of French Trustee *v.* Hay, (22 Wall. 250), between which and this case there is no substantial difference."

See also Cole *v.* Cunningham, 133 U. S. 107; Root *v.* Woolworth, 150 U. S. 401.

The provision of Revised Statutes Sec. 720, that no writ of injunction shall be granted by any court of the United States to stay proceedings in a state court, does not apply where jurisdiction of the Federal court has first attached. Fiske *v.* Railway, 10 Blatch. 520, (Fed. Case 4830); Lanning *v.* Osborne 79 Fed. 657; Terre Haute & I. R. Co. *v.* Peoria & P. U. R. Co. 82 Fed. 943; Fidelity &c. Co. *v.* Norfolk & W. R. Co. 88 Fed. 815.

The fact that an appeal is pending does not, in my opinion, prevent the circuit court, in a proper case, from taking such action as will protect the property and preserve the rights of the parties until the appeal can be determined. 2 Enc. of P. & P. 330–331; Hinson *v.* Adrian, 91 N. C. 372.

In Allen *v.* Allen, 80 Ala. 154, it is held that notwithstanding an appeal the chancellor rendering the decree may take steps to prevent the abuse of the process of the court. Summerville J. delivering the opinion of the court, used this language:

"The chancellor very clearly erred in dismissing the motion made by the appellant to set aside the sale of the lands in controversy, upon the theory that the appeal pending in this court deprived him of all jurisdiction of the matter. We do not doubt that, when a decree has been rendered by a court of equity, and an appeal has been prosecuted to this court from such decree, a chancellor would no longer have such jurisdiction of the cause as would enable him to render any further decree affecting the rights and equities of the parties in the same cause during the pendency of the appeal.

"The present motion, however, is a separate and distinct proceeding from the chancery suit which culminated in the decree from which the appeal in question was taken. It is based upon grounds which have nothing to do with the equities involved in

and settled by the decree, and which have been originated subsequent to its rendition. The purpose of the motion is not to raise any question going behind the decree or concluded by it, but only to prevent any abuse of the process of the court by the agency of which it is sought to enforce the execution of the decree."

This is sustained also by decisions of the Supreme Court of the United States, Jennings *v.* Carson, 4 Cranch 2, (and particularly the language of Chief Justice Marshall in the opinion on pages 24 and 25); also Spring *v.* South Carolina Ins. Co. 6 Wheat. 518.

I do not think the cases of Draper *v.* Davis, 102 U. S. 370, Ensminger *v.* Powers, 108 U. S. 292, Keyser *v.* Farr, 105 U. S. 265, Citizens Bank of Wichita *v.* Farwell, 56 Fed. 539, and Morrin *v.* Lawler, 91 Fed. 693, cited by defendant's counsel, are applicable to the question presented here.

An injunction, as prayed, will issue, to remain of force until the further order of the court. When the appeal pending in the supreme court has been disposed of further direction will be given the matter either upon argument or without it as counsel may prefer.

This October 8th, 1901.

WM. T. NEWMAN,
U. S. Judge.

Filed in Clerk's Office 8 day of Oct. 1901.

O. C. FULLER, *Clerk.*
By J. D. STEWARD, *Deputy.*

UNITED STATES OF AMERICA, *Northern District of Georgia.* } ss.

I, O. C. Fuller, Clerk of the United States Circuit Court, in and for the Northern District of Georgia, do hereby certify that the foregoing and attached eighty (80) pages of printing and writing is a true, full, correct and complete transcript of the record, except as to exhibits "A" and "B" on page numbered 65 which exhibits "A" and "B" are identical with exhibit "A" on page numbered 16 on file and remaining of record in my office in the matter of Riverdale Cotton Mills against Alabama and Georgia Manufacturing Company.

In testimony whereof, I hereunto set my hand and seal of the said Circuit Court, at Atlanta, Ga., this the 29th day of October, A. D. 1901.

[SEAL.] O. C. FULLER, *Clerk.*

To the Auditor of the State of Alabama:

The Riverdale Cotton Mills a corporation organized under the laws of Georgia, having paid into the treasury of the State of Alabama, the sum of Fifty no/100 dollars, the fee required to be paid under section 1321 of the Code of 1896, in compliance with section 1322 of the Code, files in your office this instrument in writing, under its seal, signed officially by its President and Secretary, shows that its name is Riverdale Cotton Mills; that it is incorporated under the laws of Georgia; that its principal place of business in the State of Alabama is Riverview with an authorized agent thereat, and that its capital stock is One hundred thousand dollars.

Witness the James Pierce by its President, and Horace S. Sears its Secretary, and its corporate seal, this 13 day of April 1899.

(CORPORATE SEAL) By JAMES PIERCE *its President*,
HORACE S. SEARS *its Secretary*.

The following fees are to be paid into the State Treasury under section 1321 of Code of 1896:

When the capital stock does not exceed $50,000	fee of	$25.00
When it exceeds $50,000 but does not exceed $100,000	" "	50.00
When it exceeds $100,000 but does not exceed $250,000	" "	75.00
When it exceeds $250,000 but does not exceed $500,000	" "	100.00
When it exceeds $500,000 but does not exceed $1,000,000	" "	200.00
When it exceeds $1,000,000	" "	250.00

All corporations or mutual companies which have no capital stock shall pay a fee of $25.00.

Filed Feby. 19th 1900 and fee paid Feby. 19th 1900.

W. S. WHITE, *Auditor*.

STATE OF ALABAMA, }
Auditor's Office. }

I, T. L. Sorrell, Auditor of the State of Alabama, hereby certify that the within is a true and correct copy of the statement filed in this office, under section 1322 of the Code of Alabama, by the Riverdale Cotton Mills, together with the endorsements thereon, as appears from the original now on file in this office.

Given under my hand and the seal of office, in the City of Montgomery, this the 21st day of June, A. D. 1901.

T. L. SORRELL,
Auditor.

(SEAL)

UNITED STATES OF AMERICA, *Northern District of Georgia.* } *ss.*

I, O. C. Fuller, Clerk of the United States Circuit Court, in and for the Northern District of Georgia, do hereby certify that the above and foregoing 2 pages of printing and writing is a true, full, correct and complete copy of the original certificate of T. L. Sorrell, Auditor, on file and remaining in my office in the matter of Riverdale Cotton Mills against Alabama & Georgia Manufacturing Co. *et al.*

In testimony whereof, I hereunto set my hand and seal of the said Circuit Court, at Atlanta, Ga., this the first day of November, A. D. 1901.

(SEAL) O. C. FULLER, *Clerk.*

THE HUGULEY MANUFACTURING COMPANY AND THE Alabama and Georgia Manufacturing Company,
vs.
THE WEST POINT MANUFACTURING COMPANY, THE Galeton Cotton Mills, the Riverdale Cotton Mills, J. J. Robinson Trustee, etc., and Wm. T. Huguley, Trustee, &c.

In the Chancery Court of Chambers County, at LaFayette, Ala., First District, Northeastern Chancery Division of Alabama.

June Term, 1901.

"At a Court of Chancery, held for the First District, composed of the County of Chambers, in the State of Alabama, at the Court House thereof in the town of LaFayette, on the second Monday in June, being the tenth (10) day thereof, in the year of our Lord One Thousand Nine Hundred and one (1901), present the Honorable Richard B. Kelly, Chancellor of the Northeastern Chancery Division of Alabama, and Armstead Brown, Esq., the Register of said District, and S. M. Richards, Sheriff of said County, by J. W. Payne, Deputy Sheriff, the following proceedings were had and decrees rendered :—

"No. 625. THE HUGULEY MFG. CO. *et al.*, *vs.* THE WEST POINT MFG. CO. *et als.* } June 10th, 1901.

"Comes the Complainants, by their Solicitors, and on their motion this cause is submitted upon the demurrer of the defendants, The West Point Mfg. Co., *et als.*, to the original bill, and their motion to dismiss the bill for want of equity, and upon the demurrer and motion of J. J. Robinson, Trustee, to the original bill, and by consent the same is held for decree in vacation, the cause to be argued at Opelika, Alabama."

STATE OF ALABAMA, }
Chambers County. }

Office of the Register in Chancery for said County.

I, Armstead Brown, Register in Chancery in and for said County in said State, hereby certify that at the June Term, 1901, of the Chancery Court of Chambers County, Ala., being the First District, Northeastern Chancery Division of said State, held on the 10th day of June, 1901, the foregoing cause coming on to be heard, the foregoing order was made by the Chancellor, Hon. R. B. Kelly, and entered upon page 420 of Minute Book B of said Court, and that the preceding page, numbered one (1), contains a full, true and correct transcript of said order, as well also as a correct copy of the caption of the Minutes of said term at which said order was rendered.

Given under my hand and the seal of said Court, this the 29th day of October, 1901.

ARMSTEAD BROWN,
Register in Chancery.

(SEAL)

DISTRICT OF COLUMBIA, }
Washington, D. C. }

I, Frank L. Welles, of the firm of Welles, Bennett & Welles, Washington, D. C., state on oath that I appeared for said firm and as counsel for other defendants in the case of "The Riverdale Cotton Mills of the State of Georgia *vs.* The Alabama and Georgia Manufacturing Company of the State of Alabama, *et al.*

I further state on oath that the printed record or records, Volumes 1 and 2, filed herewith, were the records referred to by counsel upon both sides and by the court in the hearing upon said ancillary proceedings.

FRANK L. WELLES.

Sworn to and subscribed before me, this the 6th day of November, 1901.

L. M. FOX,
Notary Public.

(SEAL.)

Supreme Court of the United States.

OCTOBER TERM, 1901.

In re The Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company, Petitioners.

[February 24, 1902.]

The Riverdale Cotton Mills, by leave of court, filed June 10, 1901, in the Circuit Court of the United States for the Northern District of Georgia, a bill against the Alabama and Georgia Manufacturing Company and the Huguley Manufacturing Company, as also certain solicitors of said companies, as ancillary to the bill of foreclosure in that court, brought by Robinson, trustee, against said companies, the appeal in which has just been disposed of.

The bill averred that the defendant companies were corporations of Georgia, and if they had also been authorized under the laws of Alabama, they had no place of business in that State, but only in Georgia; and that the only officers, directors and stockholders they ever had were the officers, directors and stockholders of the corporations organized in Georgia; that as long as they had any property, it was situated partly in Georgia and partly in Alabama, and was operated as one business from each of the offices of the corporations in Georgia; and that the property of the Alabama and Georgia Company was fully described in the trust deed, a copy of which was attached, being the trust deed foreclosed at the suit of Robinson, and the property of the Huguley Manufacturing Company was an equity of redemption therein acquired after the execution and delivery of that trust deed. The bill then set forth the acquisition by the Huguley Company of the property, subject to the trust deed, by proceedings in the Superior Court of Troup County, Georgia; the filing by Robinson of the bill to foreclose the trust deed; the decree of foreclosure; the sale to representatives of the bondholders, and the transfer to the Galeton Cotton Mills; the reversal of that decree by the Circuit Court of Appeals; the second decree and second sale; the confirmation of sale and deed to complainant, who paid all the purchase money; and the appeal thereupon to the Circuit Court of Appeals, and the affirmance of the decree and proceedings. (94 Fed. Rep. 269.) It was further averred that from this decree of affirmance an appeal was prosecuted May 16, 1899, to the Supreme Court of the United States where it was still pending.

The bill further showed that thereafter the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company filed in the chancery court of Chambers County, Alabama, their bill of complaint against the Riverdale Cotton Mills, the Galeton Cotton Mills, Robinson, trustee, Huguley, trustee, and the West Point Manufacturing Company, alleging that the Alabama and Georgia Manufacturing Company was an Alabama corporation; that all the property described in the trust deed was situated in Alabama, and that no sale of the property was ever made in Alabama, and that all judicial proceedings in the Circuit Court for the Northern District of Georgia were null and void, so far as affected the title of the two companies to the part of the lands lying in Alabama; and it was sought to hold the Riverdale Cotton Mills, the Galeton Cotton Mills and the West Point Manufacturing Company, for the rents and profits of the property since May, 1892.

Complainant further averred that each and all of the claims to relief set up by these two companies in the Chambers chancery court were set up, or could have been set up, and were adjudicated in the proceedings had in the Circuit Court in the suit of Robinson, trustee, as aforesaid, as appeared from the record and proceedings in that case; and that all the substantial issues raised in the suit in Chambers County had been adjudged and determined by the Circuit Court. Complainant alleged that a large part of the property described in the trust deed was situated in the State of Georgia, and another part in the State of Alabama, and that the Circuit Court acquired and had full jurisdiction to order the sale of all the property described in the trust deed, and that neither the Huguley Manufacturing Company, the Alabama and Georgia Manufacturing Company, nor W. T. Huguley, who were defendants to the bill filed by Robinson, ever during the progress of the cause in the Circuit Court raised any issue as to the jurisdiction of that court to render a decree for the sale of all the lands; and complainant alleged that the property was in fact indivisible. Complaint reiterated that the same companies were seeking by the bill of complaint filed in Chambers County to again raise and have investigated by a court of equity the same identical matters and issues which had theretofore been passed upon and adjudicated by the Circuit Court in the suit of Robinson. Complainant invoked the jurisdiction of the Circuit Court as ancillary to the main suit instituted by Robinson to protect it against the violation of its rights by the prosecution of the bill of complaint in the chancery court of Chambers County, and prayed for an injunction and general relief.

The Circuit Court, on consideration of the bill, ordered defendants to show cause why an injunction should not issue as prayed for, and in the meantime granted a restraining order. The two defendant companies

appeared and showed cause, setting up that they were corporations chartered under the laws of Alabama; that the Alabama and Georgia Manufacturing Company was a distinct and separate legal entity from the Alabama and Georgia Manufacturing Company incorporated under the laws of Georgia, and that it was the Georgia corporation and not the Alabama corporation that was made party defendant to the suit of Robinson; and they alleged, on information and belief, that the Huguley Manufacturing Company never was incorporated under the laws of Georgia. They insisted that in the proceedings in Alabama the decree of the Circuit Court in the foreclosure suit was not conclusive upon them as the Circuit Court was without jurisdiction, and that the Circuit Court had no jurisdiction of this bill because it was an original and not an ancillary bill, and complainants and defendants were citizens of Georgia; and further, that the foreclosure suit was pending in the Supreme Court of the United States. It was also averred that the Circuit Court was without jurisdiction to issue the injunction prayed in view of section 720 of the Revised Statutes; and further, because after filing the bill in Alabama, all the defendants thereto, without pleading in abatement, had filed demurrers, pleas and answers.

The response further set up that the Circuit Court was without jurisdiction of the original foreclosure suit because the complainant therein and the Huguley Manufacturing Company were citizens of Alabama, and that the charter of the Alabama and Georgia Manufacturing Company in Georgia had expired by legal limitation before any sale of the property under the foreclosure proceedings. And it was further alleged that the Circuit Court was without jurisdiction to sell the mortgaged property because it was all situated in the State of Alabama, or, if not, to sell that portion lying in the State of Alabama, and it was denied that the property in Alabama and Georgia were parts of an indivisible whole. Respondents asked that the rule might be discharged, and the bill dismissed.

Upon a hearing the Circuit Court granted an injunction as prayed until the further order of the court. 111 Fed. Rep. 401.

On November 20, 1901, the Huguley Manufacturing Company and the Alabama and Georgia Manufacturing Company submitted a motion for leave to file their petition for a writ of prohibition to restrain the Circuit Court of the United States for the Northern District of Georgia from taking any further steps in the suit of the Riverdale Cotton Mills or in respect of the suit in Alabama, and for a mandamus requiring the Circuit Court to dismiss the bill of the Riverdale Cotton Mills. The petition, which they asked leave to file, averred that they were complainants in the chancery suit in Alabama filed for the purpose of redeeming the property in question, and stated that they were not parties to any litigation in the Circuit Court for the Northern District of Georgia, but that they had been

served with what purported to be process from that court to appear in the alleged ancillary proceedings. Petitioners charged that the Circuit Court had no jurisdiction over the original suit in Georgia because the property was located in the State of Alabama; that the Alabama and Georgia Manufacturing Company of Alabama was not made a party to the suit in Georgia; that one of the trustees was not joined as complainant; that bondholders protesting against the foreclosure were not made parties; that the other bondholders were not made parties; that the Huguley Manufacturing Company was not given its day in court for redemption; and, in brief, reiterated the grounds presented in their response to the rule to show cause.

Mr. Chief Justice FULLER delivered the opinion of the Court:

It is firmly established that where it appears that a court, whose action is sought to be prohibited, has clearly no jurisdiction of the cause originally, a party who has objected to the jurisdiction at the outset and has no other remedy, is entitled to a writ of prohibition as a matter of right. But where there is another legal remedy by appeal or otherwise, or where the question of the jurisdiction of the court is doubtful, or depends on facts which are not made matter of record, the granting or refusal of the writ is discretionary. *In re Rice*, 155 U. S. 396. And that the writ of mandamus cannot be used to perform the office of an appeal or writ of error, and is only granted as a general rule where there is no other adequate remedy. *In re Atlantic City Railroad Company*, 164 U. S. 633.

And it may be added that it is also the general rule as to the writ of certiorari when sought as between private parties and on the ground that the proceedings below are void, that it will be granted or denied in the sound discretion of the court, and will be refused where there is a plain and adequate remedy by appeal or otherwise. *In re Tampa Suburban Railway Company*, 168 U. S. 583.

In this case there was under the act of Congress of June 6, 1900, 31 Stat. 660, c. 803, a plain and adequate remedy by appeal to the Circuit Court of Appeals for the Fifth Circuit from the interlocutory order granting an injunction. After a final decree an appeal to this court would lie in respect of the jurisdiction if the question were properly raised and certified, or if issues were raised and decided bringing the case within section five of the act of March 3, 1891; or to the Circuit Court of Appeals. The case as presented is far from being one in which we should regard it as a proper exercise of our jurisdiction to interfere with the orderly progress of the suit below by the issue of either of the writs applied for. *In re New York and Porto Rico Steamship Company, Petitioner*, 155 U. S. 523, 531.

The contention of counsel seems to go to the extent of insisting that the proceedings in the foreclosure suit were wholly void, and without force and effect as to all persons and for all purposes, and incapable of being made otherwise; and in declining to go into the subject at large we are not to be understood as concurring in that proposition.

Leave denied.

True copy.

Test:

Clerk Supreme Court, U. S.